No. 87-616

In the Supreme Court of the United States

OCTOBER TERM, 1987

HUBERT PARK BECK, DOROTHY FAHS BECK, ROBERT J. BECK and OTTO WEINMANN,
Petitioners,

vs.

MANUFACTURERS HANOVER TRUST COMPANY; MILBANK, TWEED, HADLEY & McCLOY; KELLEY DRYE & WARREN; DONALD B. HERTERICH; ISAAC SHAPIRO; and EDWARD ROBERTS, III,
Respondents.

REPLY TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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PRELIMINARY STATEMENT

In their brief respondents offer four arguments in opposition to the granting of a writ of certiorari: (1) the Second Circuit's "enterprise" rule does not conflict with that of other circuits; (2) the conflict among the circuits on "pattern" does not merit review at this time; (3) Congress is considering legislation which would render moot any conflict regarding "pattern"; and (4) this case is inappropriate for review by this court because it does not involve any clearly definable criminal conduct. Each of these contentions will be addressed.

At the outset, however, two preliminary matters must be briefly discussed: (1) respondents' omission of any analysis of the statutory language, and (2) petitioners' standing to plead the allegations set forth in Phase III of the amended complaint — respondents' role in the defrauding of the government and people of Mexico.

1. The Statutory Language

It is axiomatic that the starting point for the construction of a statute must be its words. "In determining the scope of a statute, we look first to its language. If the statutory language is unambiguous, in the absence of 'a clearly expressed legislative intent to the contrary, that language must ordinarily be regarded as conclusive.'" *United States v. Turkette*, 452 U.S. 576, 580 (1981), citing *Consumer Product Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980).

Petitioners have argued that the "single-purpose scheme" rule of courts such as the Fourth and Tenth Circuits, which preclude a "pattern" in the case of a single-purpose scheme that had terminated at the inception of the action, is in direct contradiction of §1962(b),

which expressly contemplates the existence of a "pattern" in such circumstances. And, since Congress enacted only one standard for "pattern" in §1961(5), which is equally applicable to all of the subsections of §1962, the "single-purpose scheme" rule must be violative of §§ 1962(a), (c), and (d) as well. Finally, the "single-purpose enterprise" rule of the Second and Fifth Circuits, which is dependent on "pattern" considerations but goes beyond them because "enterprise" as defined in §1961(4) is not susceptible of similar judicial interpretation, is violative of all of the subsections of §1962 for the same reasons.

Nowhere in their brief do respondents attempt to provide an answer to this argument. Only one conclusion can be drawn from this: they have none.

2. Petitioners' standing with respect to Phase III

Respondents assert, without the citation of any authority, that petitioners, "[who] do not represent or act as ombudsmen for the Mexican Government or people, ... have no standing to maintain the Phase III claim and the federal courts have no jurisdiction to entertain it" (Brief in Opp. at 3). Petitioners' standing with respect to the Phase III allegations is not an issue on this petition. However, this Court should be aware that respondents argued extensively against such standing before the courts below, and that both the District Court (645 F. Supp. at 681-82) and Second Circuit (820 F. 2d at 50-51) rejected their position, holding that petitioners' Phase III allegations stated a claim under Fed. R. Civ. P. 12(b)(6).

REPLY TO RESPONDENTS' SUBSTANTIVE ARGUMENTS

1. The conflicts among the circuits regarding "enterprise."

Respondents' argument regarding "enterprise" is obfuscatory. The circuits may, as respondents assert, be in general agreement as to the *nature* of "enterprise," but only the Second and Fifth Circuits have adopted the *rule* that a single-purpose enterprise that is not open-ended cannot be a RICO enterprise within the meaning of §1961(4). No circuit other than the Second and Fifth would, after having reversed the District Court by holding that petitioners had adequately pled a "pattern," have held that they had not pled an "enterprise."

Contrary to respondents' contention, *United States v. Turkette* (*supra*) provides no support for the "single-purpose enterprise" rule. *Turkette* merely holds that the definition of "enterprise" in §1961(4) includes both legitimate and illegitimate enterprises within its scope.

Turkette actually undermines respondents' position, recognizing that the definition of "enterprise" must be read expansively, since "Section 904(a) of RICO, ... directs that 'the provisions of this Title shall be liberally construed to effectuate its remedial purposes....'" 452 U.S. at 587. Despite the fact that Reps. Eckhardt and Mikva (among others) are cited as having been chary of sweeping areas of state criminal law into the Federal realm (*Id.*), "[t]he language of the statute, ... — the most reliable evidence of its intent — reveals that Congress opted for a far broader definition of the word 'enterprise,' and we are unconvinced by anything in the legislative history that this definition should be given less than its full effect." *Id.* at 593.

All *Turkette* requires for proof of an "enterprise" is "evidence of an ongoing organization, formal or informal, and ... evidence that the various associates function as a continuing unit." *Id.* at 583. This requirement is fully complied with by the amended complaint, and nothing in the Second Circuit opinion gives rise to a contrary conclusion.* The "single-purpose enterprise" rule, which transforms *Turkette's* "continuing unit" requirement into a condition that the enterprise be open-ended and in existence at the institution of the action, comes not from *Turkette*, but from the Second Circuit's own reading of the statute.

2. The conflicts among the Circuits regarding "pattern."

Respondents attempt, by picking language out of the opinions, to harmonize *Barticheck v. Fidelity Union Bank/First National State*, No. 86-5870, slip op. (3rd Cir. October 29, 1987), 56 U.S.L.W. 2260 (November 10, 1987) (to be reported at 832 F. 2d 36; Appendix P), with *Eastern Publishing and Advertising, Inc. v. Chesapeake Publishing and Advertising, Inc.*, No. 87-1520, slip op. (4th Cir. October 16, 1987) (to be reported at 831 F. 2d 488; Appendix O), and *Garbade v. Great Divide Mining and Milling Corp.*, No. 86-2544, slip op. (10th Cir. October 15, 1987) (to be reported at 831 F. 2d 212; Appendix N).

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* Indeed, as is set forth in the petition for certiorari, the Second Circuit's holding that the amended complaint adequately pled a "pattern" was necessarily predicated, under Second Circuit precedent, on its proper allegation of an "enterprise." *Cf., United States v. Ianniello*, 808 F. 2d 184 (2d Cir. 1986), *cert. denied*, 107 S. Ct. 3230 (1987); *United States v. Weisman*, 624 F. 2d 1118 (2d Cir.), *cert. denied*, 449 U.S. 871 (1980).

But no amount of selective culling can avoid the diametrically opposed *holdings* in those cases, which were decided within two weeks of each other: *Barticheck* expressly rejects the "single-purpose scheme" rule for pattern; *Eastern Publishing* and *Garbade* embrace it. It is clear that, had *Eastern Publishing* and *Garbade* been brought in the Third Circuit, the plaintiffs would have prevailed in each case.

In rejecting the "single-purpose scheme" rule for pattern the Third Circuit pointed out that the notion that "continuity" requires "open-endedness" would produce anomalous results: "This approach would allow a party to maintain a RICO claim if he brought suit before the unlawful scheme had attained its objective; in such a case the scheme would presumably be considered open-ended. The same interpretation, though, would deny a RICO cause of action in a case where the scheme had fully accomplished its goal. Yet it is the completed scheme that inflicts the greater harm and more strongly implicates the remedial purposes of RICO." *Barticheck*, 56 U.S.L.W. at 2260, slip op. at 8-9; Appendix P at 162A. Respondents do not refer to this observation by the Court, much less provide an answer to it.

Respondents denominate petitioners' claims regarding the chaotic state of "pattern" litigation as "highly exaggerated." Brief in Opp. at 4-5. But a review of the existing situation makes it clear that the appellation is warranted:

The Eighth Circuit has taken a very restrictive view of "pattern," requiring at least two fraudulent schemes for its existence. *Superior Oil Co. v. Fulmer*, 785 F. 2d 252, 257

(8th Cir. 1986).* The First Circuit has also taken a restrictive approach, and while implicitly critical of *Superior Oil*, has left open whether it would adopt the "multiple-schemes" rule. *Roeder v. Alpha Industries, Inc.*, 814 F. 2d 22, 31-32 (1st Cir. 1987).

The Seventh Circuit has adopted a pragmatic, case-by-case approach to "pattern." *Morgan v. Bank of Waukegan*, 804 F. 2d 970, 975 (7th Cir. 1986). Similar pragmatic approaches have been taken by the Fourth Circuit (*International Data Bank, Ltd. v. Zepkin*, 812 F. 2d 149, 154 (4th Cir. 1987)), and the Eleventh Circuit (*Bank of America v. Touche Ross & Co.*, 782 F. 2d 966, 971 (11th Cir. 1986)). The similarity of approach is belied by the profound differences in result, however. The application by the Eleventh Circuit is far more liberal than that of the Seventh; in the latter, a lengthy line of "no-pattern" rulings has developed alongside *Morgan*, at least some of which would appear to satisfy the "pattern" requirements of *Bank of America*. And neither the Seventh nor the Eleventh Circuit recognizes the "single-purpose scheme" rule recently adopted by the Fourth in *Eastern Publishing and Advertising, Inc., v. Chesapeake Publishing and Advertising, supra*.

The Tenth Circuit, while rejecting the "multiple schemes" test, has taken a restrictive approach to

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* As is pointed out in both the petition for certiorari and respondents' brief in opposition, two judges in *H.J., Inc. v. Northwestern Bell Telephone Co.*, 829 F. 2d 648 (8th Cir. 1987), while recognizing the controlling authority of *Superior Oil*, indicated in concurring opinions that the "multiple schemes" rule should be reexamined by the Court *en banc*. But that is not tantamount to a reversal; the solidity of the "multiple schemes" rule is attested to by a long and unvarying line of Eighth Circuit cases. *See*, Petition at 13.

"pattern" (*Condict v. Condict*, 815 F. 2d 579 (10th Cir. 1987); *Torwest DBC, Inc. v. Dick*, 810 F. 2d 925 (10th Cir. 1987)), and has added to the restrictiveness by adopting the "single-purpose scheme" rule (*Garbade v. Great Divide Mining & Milling Corp., supra*).

The Ninth Circuit has taken a relatively liberal approach to "pattern" (*Televideo Systems, Inc. v. Heidenthal*, 826 F. 2d 915 (9th Cir. 1987)), but appears to have implicitly superimposed the "single-purpose scheme" rule (*Sun Savings & Loan Association v. Dierdorff*, 825 F. 2d 187 (9th Cir. 1987); *Schreiber Distributing Co. v. Serv-Well Furniture Co.*, 806 F. 2d 1393 (9th Cir. 1986)).

The Third Circuit has adopted a liberal reading of "pattern," and has expressly rejected the "single-purpose scheme" rule. *Barticheck v. Fidelity Union Bank/First National State, supra.*

The Second and Fifth Circuits have adopted the most liberal "pattern" rules of all. *United States v. Ianniello, supra; R.A.G.S. Couture, Inc., v. Hyatt*, 774 F. 2d 1350, 1355 (5th Cir. 1985). Alone among the Circuits, however, they adhere to the "single-purpose enterprise" rule. *Beck; Furman v. Cirrito*, 828 F. 2d 898 (2d Cir. 1987); *Albany Insurance Co. v. Esses*, No. 86-7968, slip op. (2d Cir. October 15, 1987) (Appendix M); *Montesano v. Seafirst Corp.*, 818 F. 2d 423, 426-27 (5th Cir. 1987).

From the foregoing, "chaos" appears to be an apt description of the current state of "pattern" litigation in the Federal Courts.

3. Pending Congressional legislation

Respondents argue that "even in the face of a square conflict [among the Circuits], certiorari is inappropriate

where the statute upon which the controversy rests may be amended in a manner which will prevent the problem from arising in future cases." Brief in Opp. at 12. This proceeds from a notion, based upon the separation of powers, that courts should abstain from precipitous insinuation into the legislative province where a legislative body gives evidence of attempting, by statutory amendment, to cure its improvident act. But such abstention is totally inappropriate where, as here, the amendatory legislation is necessitated not by legislative improvidence, but by judicial misapplication of the original statute. In such case the improper judicial encroachment has already occurred, and should be extirpated as quickly as possible. The same considerations that give rise to abstention in the former case militate toward direct and immediate remedial judicial action in the latter. It is respectfully submitted that this Court should take such action by granting the petition for certiorari.

4. The conduct of defendants

Respondents argue that this is a poor case for review on certiorari, because "the amended complaint does not allege any racketeering activity" (Brief in Opp. at 3), and that "neither of the lower courts was able to identify any comprehensible factual allegations of fraud in the amended complaint" (*Id.* at 4).

These assertions are absurd on their face, given the

For the sake of completeness the Court should be apprised that petitioners are aware of two bills pending in Congress that would amend RICO that were not cited by respondents. These are HR 2983, introduced by Rep. Boucher (D–Va.), and its Senate counterpart, S1523, introduced by Sen. Metzenbaum (D–Ohio). So far as petitioners are aware, neither of these bills would amend the definition of "pattern" contained in the current statute.

holding of the District Court that the allegations of Phases II and III of the amended complaint state a RICO claim under Rule 12(b)(6) (645 F. Supp. at 681-82), and the holding of the Second Circuit that the allegations of Phases II and III adequately plead a RICO "pattern" (820 F. 2d at 50-51). In order for this Court to arrive at its own independent judgment as to the nature and gravity of respondents' conduct, however, the amended complaint (with annexed exhibits that substantially document its allegations) has been reproduced as Appendix R.

Respectfully submitted,

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APPENDIX R

AMENDED COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HUBERT PARK BECK, DOROTHY FAHS BECK, ROBERT J. BECK and OTTO WEINMANN,

Plaintiffs,

-against-

MANUFACTURERS HANOVER TRUST COMPANY; MILBANK, TWEED, HADLEY & McCLOY; KELLEY DRYE & WARREN; DONALD B. HERTERICH; ISAAC SHAPIRO; and EDWARD ROBERTS, III,

Defendants.

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85 Civ. 9361 (RWS)

AMENDED COMPLAINT

Jury Trial Demanded

Plaintiffs, for their amended complaint, respectfully allege as follows:

1. This case is brought under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §1961 *et seq*. The jurisdiction of this Court is invoked pursuant to 18 U.S.C. §1964(c).

2. Defendant Manufacturers Hanover Trust

Company ("Manufacturers") is a corporation organized under the laws of the State of New York, with its principal office in the City of New York.

3. Defendant Milbank, Tweed, Hadley & McCloy ("Milbank") is a partnership organized under the laws of the State of New York, with its principal office in the City of New York.

4. Defendant Kelley Drye & Warren ("Kelley") is a partnership organized under the laws of the State of New York, with its principal office in the City of New York.

5. Defendant Donald B. Herterich ("Herterich") is, and has been at the relevant times set forth herein, a Senior Vice-President of Manufacturers.

6. Defendant Isaac Shapiro ("Shapiro") is, and has been at the relevant times set forth herein, a partner in Milbank.

7. Defendant Edward Roberts, III ("Roberts") is, and has been at the relevant times set forth herein, a partner in Kelley.

8. Plaintiffs are the owners of defaulted bearer bonds (collectively, the "Bonds") of two related senior series of the National Railway Company of Mexico ("National"), a Utah corporation. In the aggregate, they own $1,500 in principal amount of 4-1/2% Prior Lien Gold Bonds, dated March 15, 1902 and due on October 1, 1926 (the "Prior Lien Bonds"); and $153,500 in principal amount of 4% Gold Bonds, due October 1, 1951 (the "Consolidated Mortgage Bonds"). The initial issue of the Prior Lien Bonds totalled $23,000,000 in principal amount; that of the Consolidated Mortgage Bonds totalled $27,289,000 (although 30,000,000 had been authorized).

9. Manufacturers is the successor trustee under the indentures pursuant to which the Bonds were issued.

Summary of allegations

10. Plaintiffs allege that defendants violated RICO (i) by defrauding and conspiring to defraud plaintiffs and similarly situated Bond holders of principal and interest on the Bonds and the value of collateral held by Manufacturers as trustee; and (ii) by defrauding and conspiring to defraud The United States of Mexico ("Mexico") of the value of such collateral. This is not a class action; plaintiffs do not purport to represent any Bond holders other than themselves.

11. This is a companion case to two cases pending in the Supreme Court of New York County: *Beck, et al. v. Manufacturers Hanover Trust Company,* Index No. 12896/83 (*"Beck I"*); and *Beck, et al. v. Manufacturers Hanover Trust Company,* Index No. 15145/85 (*"Beck II"*).

12. In *Beck I* Manufacturers is alleged to have engaged in fraud and to have breached its fiduciary responsibilities to plaintiffs, as Bond holders, in its administration of the indenture trust. In *Beck II* Manufacturers is alleged to have breached its fiduciary responsibilities to plaintiffs as Bond holders in the conduct of its defense in *Beck I.* Compensatory and punitive damages have been demanded in both actions, which have been assigned to the individual calendar of Hon. Martin Evans; Milbank and Kelley are co-counsel for Manufacturers in both actions.

13. This amended complaint contains ten counts. Each of the counts encompasses racketeering activity, as defined in 18 U.S.C. §1961(1), involving three phases of such activity in the administration of the trust. The first phase includes seven distinct episodes of unlawful

conduct, the second two, and the third three; the episodes constituting each phase are alleged to satisfy alone any judicial requirement of continuity for a pattern of racketeering activity under 18 U.S.C. §1961(5). The predicate acts alleged involve violations of 18 U.S.C. §1341 (relating to mail fraud), and 18 U.S.C. §1343 (relating to wire fraud). Plaintiffs do not at this time allege a pattern of racketeering activity referable to each such phase or episode for each defendant on each count.

14. The phases of unlawful activity alleged by plaintiffs are the following:

(i) Phase I: the defrauding of plaintiffs and similarly situated holders of Prior Lien Bonds by unlawfully treating Mexico as a holder of those bonds with respect to seven distributions of accrued interest from April 1, 1972 through December 31, 1981. Through this treatment defendants wrongfully permitted more than ninety percent of each such distribution to be siphoned off to Mexico, to the detriment of plaintiffs and other individual holders of Prior Lien Bonds;

(ii) Phase II: the defrauding of plaintiffs and similarly situated holders of both series of Bonds of substantially the entire value of the collateral held by Manufacturers as indenture trustee through (a) the sale of the collateral at a fraudulently low price, and (b) the treatment of Mexico as a Bond holder entitled to 95.83% of the fraudulently low proceeds of the sale;

(iii) Phase III: the defrauding of the government and people of Mexico of their purported share of the proceeds of the sale of collateral through (a) the sale of the collateral at a fraudulently low price; (b) the failure to disclose to the government of Mexico that it was being defrauded by corrupt Mexican nationals, some of whom

were government officials, and that Mexico could have appeared at the sale and purchased the collateral for little or no cash outlay; and (c) the acceptance from the purchaser by Manufacturers, in payment of 95.83% of the sale price, of a fraudulent and legally ineffective assignment, given without consideration, of Prior Lien Bonds previously recognized by Manufacturers as validly held by Mexico.

15. Count One, against all six defendants, alleges that they violated 18 U.S.C. §1962(c) by their membership in an association-in-fact which constituted an enterprise within the meaning of 18 U.S.C. §1961(4), and by their conduct of the affairs of that enterprise through a pattern of racketeering activity involving the foregoing episodes of unlawful conduct.

16. Count Two, against Herterich, Shapiro, and Roberts, alleges that those defendants violated 18 U.S.C. §1962(c) by conducting the affairs of the respective enterprises of Manufacturers, Milbank, and Kelley through such pattern of racketeering activity.

17. Count Three, against Manufacturers, Milbank, and Kelley, alleges that those defendants violated 18 U.S.C. §1962(a) by receiving income from the foregoing pattern of racketeering activity, and investing part of the proceeds of such income in (i) the establishment and operation of the enterprise consisting of the association-in-fact of the six defendants, and/or (ii) the operation of the enterprises of, respectively, Manufacturers, Milbank, and Kelley.

18. Count Four, against all six defendants, alleges that they violated 18 U.S.C. §1962(b) by acquiring and/or maintaining, through a pattern of racketeering activity, an interest in and/or control of the enterprise consisting

of the association-in-fact of the six defendants.

19. Count Five, against Herterich, Shapiro, and Roberts, alleges that they violated 18 U.S.C. §1962(b) by maintaining, through a pattern of racketeering activity, an interest in and/or control of the enterprises of, respectively, Manufacturers, Milbank, and Kelley.

20. Counts Six through Ten, against all six defendants, collectively allege that defendants violated 18 U.S.C. §1962(d) by conspiring to commit the violations of 18 U.S.C. §§1962(a), (b), and (c) set forth in Counts One through Five.

Underlying allegations

21. As security for the debt evidenced by the Bonds, National transferred certain property (the "collateral") to defendant's predecessor trustee. The Prior Lien Bonds represented a first mortgage against the collateral, the Consolidated Mortgage Bonds a second. The collateral included the following:

(i) All of the authorized and outstanding shares of the $100 par value capital stock of Texas-Mexican Railway Company ("Tex-Mex");

(ii) A substantial amount of real property, most of it in Laredo, Texas, some of which was owned by National and leased to Tex-Mex, the balance of which was owned by Tex-Mex;

(iii) U.S. $960,000 in aggregate principal amount of Corpus Christi, San Diego & Rio Grande Narrow-Gauge Railroad Company 7% bonds due July 1, 1910;

(iv) U.S. $1,380,000 in aggregate principal amount

of Tex-Mex 6% bonds due July 1, 1921; and

(v) That portion of the International Railroad Bridge between Nuevo Laredo (in Mexico) and Laredo, Texas, which is in the United States.

22. Pursuant to a Plan of Readjustment and Union, dated April 6, 1908 (the "1908 Plan"), Ferrocarriles Nacionales de Mexico ("Ferrocarriles"), a Mexican corporation, acquired the stock of National and the stock and bonds of Mexican Central Railway Company, Limited ("Central"), a Massachusetts corporation. On information and belief a majority of the stock of Ferrocarriles has always been owned by the government of Mexico.

23. The 1908 Plan called for the shareholders of National and the shareholders and bondholders of Central to deposit their securities with various enumerated depositories, to be exchanged for securities of Ferrocarriles. The 1908 Plan did not call for the deposit of National's outstanding bonds, among which are the Bonds. Under the 1908 Plan Ferrocarriles became the guarantor of National's obligations to pay interest and principal on the Bonds.

24. Pursuant to decrees dated November 25, 1936, and June 24 and June 25, 1937, National was purportedly nationalized by Mexico, and all of its assets transferred to an autonomous bureau of the Mexican government. On April 30, 1938 Mexico created the National Labor Administration of Railways, another government agency, to which, to the extent that the nationalization decrees were lawful, the ownership of National and other nationalized railroads were assigned. On December 31, 1940, all of the rights, obligations, and property of the National Labor Administration of Railways, including the purported ownership of National, were transferred to and assumed

by the Administration of the National Railways of Mexico, another agency of the Mexican government.

25. By its ownership of Ferrocarriles and its nationalization decrees Mexico became, with respect to the obligations owed to the holders of the Bonds, an effective legal issuer of the Bonds.

26. National defaulted on interest payments on the Bonds in 1914. It defaulted on principal on the Prior Lien Bonds when they became due on October 1, 1926, and on the Consolidated Mortgage Bonds when they became due on October 1, 1951. On information and belief none of such defaults was ever cured by Ferrocarriles.

27. On information and belief the aggregate amount of principal and accrued interest owing to plaintiffs on their Bonds is approximately $4,000,000 at the present time.

28. Manufacturers subsequently began, as trustee, to make sporadic distributions on account of accrued and unpaid interest on the Prior Lien Bonds. Thirteen such distributions were made, seven of which occurred after October 15, 1970, the effective date of RICO. These seven distributions represent the episodes of unlawful activity comprising Phase I of the racketeering activity alleged to have been engaged in by defendants. A schedule of such distributions, as reported by Manufacturers, follows:

Date	Distribution of accrued interest as a percentage of principal amount
Dec. 14, 1942	1
Sept. 17, 1945	1
Dec. 26, 1951	4
Apr. 28, 1954	3 1/2

Apr. 30, 1957	2
Apr. 15, 1965	5
Apr. 1, 1972	5
May 15, 1975	1 1/2
Apr. 1, 1977	3 1/2
Dec. 15, 1978	1
Dec. 15, 1979	2
Dec. 15, 1980	1
Dec. 31, 1981	23

Manufacturers also made one small distribution of interest, in 1953, on the Consolidated Mortgage Bonds. No payment or distribution of principal had ever been made on the Bonds prior to 1982.

A. Phase I

29. In 1946 Mexico embarked on a program looking toward the redemption of several series of defaulted bonds (including the Bonds), of corporations doing business in Mexico or which it deemed to be owned by Mexico. It entered into an Agreement, dated February 20, 1946 (the "1946 Agreement"), with an "International Committee of Bankers on Mexico" (the "International Committee"), pursuant to which assenting holders of the Bonds could surrender them to Mexico in accordance with two plans (Plan A and Plan B); these plans called for scaled-down payments of principal and interest to the assenting Bond holders. The Administration of the National Railways of Mexico, as the owner of National, was a party to the 1946 Agreement.

30. The International Committee was self-constituted and self-appointed, and did not have any authority with respect to the Bonds except that conferred by assenting holders (none of whom is a plaintiff in this action or, on information and belief, a previous holder of any of

plaintiffs' Bonds).

31. Provisions of the 1946 Agreement required that Bonds tendered pursuant to Plan A or Plan B ("assenting Bonds") had to be "redeemed" pursuant to schedules, and then "retired" upon redemption. Mexico was required to complete its payment obligations to the assenting Bond holders by January 1, 1975 at the latest; thus, by that time, all assenting Bonds were to have been retired by Mexico.

32. The 1946 Agreement was implemented by an offer contained in a registration statement filed by Mexico on April 24, 1948 (as amended to 1954) with the United States Securities and Exchange Commission. In a prospectus contained in that registration statement Mexico undertook to retire all assenting Bonds (whether under Plan A or Plan B) in accordance with the schedules set forth in the 1946 Agreement.

33. The vast majority of Bonds were tendered in accordance with the 1946 Agreement. Mexico also acquired some Bonds through purchases in the open market prior and subsequent to the 1946 Agreement.

34. By November 1, 1982, and on information and belief much earlier, Mexico had acquired, through tender and purchase, 95.83% of all Prior Lien Bonds and 95.50% of all Consolidated Mortgage Bonds.

35. Mexico did not retire any of the Bonds, whether acquired through tender or purchase. Instead, it continued to hold them, claiming itself to be a *bona fide* holder entitled to all of the rights and privileges of the holders of non-assenting Bonds.

36. Manufacturers, as trustee, was under a fiduciary

obligation to enforce the 1946 Agreement on behalf of the non-assenting Bond holders; accordingly, it should have treated the assenting Bonds tendered to Mexico pursuant thereto as having been retired, or taken steps to have them declared to have been retired.

37. Manufacturers should also have treated as retired the Bonds acquired by Mexico through open-market purchases, since Mexico, through its ownership of Ferrocarriles and its nationalization decrees, had become an effective legal issuer of the Bonds (¶¶ 22-25, *supra*). An issuer of defaulted bonds which has purchased some of such bonds for a fraction of their face value must, as a matter of law, treat them as retired. It may not claim to be a holder of such bonds with the same entitlement as public bond holders to participate in distributions of principal and interest.

38. Manufacturers was fully aware that a substantial number of Bonds had been tendered to Mexico pursuant to the 1946 Agreement. It also knew that Mexico had purchased some Bonds on the open market.

39. Nevertheless Manufacturers accepted Mexico's position that it was a holder on a theory that, as trustee, it "wears blinders," and was required, regardless of any extrinsic circumstances, to treat anyone in physical possession of any of the Bonds as the holder of those Bonds. Thus, with respect to the eleven interim distributions of interest made by Manufacturers as trustee subsequent to the effective date of the 1946 Agreement (¶ 28, *supra*), the portion allocated to the non-assenting Bond holders always reflected the treatment of the Bonds tendered to and purchased by Mexico as valid and outstanding. This was true even with respect to the six such distributions subsequent to January 1, 1975, by which date Mexico had fully discharged its obligations on the assenting Bonds

under the 1946 Agreement, and by which date all of such Bonds should have been retired in accordance with the 1946 Agreement and the implementing registration statement.

40. The lion's share of all of the interim distributions of interest thus went to Mexico; the interests of the non-assenting Bond holders were almost completely diluted by the treatment of Manufacturers, as trustee, of Mexico as a holder.

41. On information and belief Manufacturers' treatment of Mexico as a Bond holder was made possible through one or more of four "enterprises" within the meaning of 18 U.S.C. §1961(4); these enterprises, which existed and functioned continuously from at least October 15, 1970, the effective date of RICO, through at least November 29, 1982, the date on which the sale of the collateral held by Manufacturers was closed, were:

(i) Manufacturers;

(ii) Milbank;

(iii) Kelley; and

(iv) an association-in-fact consisting of Manufacturers; Kelley, its counsel; Milbank, counsel to Mexico; and the senior officers of Manufacturers and partners in the law firms who were primarily responsible for matters relating to and growing out of the administration of the trust.

42. The identities of the individual members of the association-in-fact varied from time to time. On information and belief:

(i) Herterich, as Senior Vice-President of Manufacturers, was a member continuously from at least October 15, 1970. His tenure thus spanned all of the episodes of unlawful conduct comprising each of the three phases of alleged racketeering activity set forth in ¶ 14, *supra;*

(ii) Shapiro was a member continuously from at least January 1, 1980. His tenure thus spanned at least the last two interest distributions in Phase I, and all of the episodes of unlawful conduct alleged in Phases II and III. Prior to Shapiro's advent, one or more other Milbank partners, none of whom is a defendant herein, were members;

(iii) Roberts was a member continuously from at least October, 1978. His tenure thus spanned at least the last four interest distributions in Phase I, and all of the episodes of unlawful conduct alleged in Phases II and III. Prior to Roberts' advent, one or more other Kelley partners, none of whom is a defendant herein, were members.

43. The functions of the enterprise of Manufacturers, Milbank, and Kelley were carried out, throughout the period beginning at least on October 15, 1970, not only through senior officers and partners, but also through a substantial number of lesser officers, associates, and support personnel.

44. On information and belief the purposes of the enterprises included the following:

(i) In Phase I, the defrauding of plaintiffs and similarly situated holders of Prior Lien Bonds by unlawfully treating Mexico as a holder of such bonds with respect to distributions of accrued interest on April 1, 1972; May 15, 1975; April 1, 1977; December 15, 1978; December 15, 1979; December 15, 1980; and December 31,

1981;

(ii) In Phase II, the defrauding of plaintiffs and similarly situated holders of both series of Bonds of substantially the entire value of the collateral held by Manufacturers as trustee through (a) the sale of the collateral at a fraudulently low price, and (b) the treatment of Mexico as a Bond holder entitled to 95.83% of the fraudulently low proceeds of the sale; and

(iii) In Phase III, the defrauding of the government and people of Mexico of their purported share of the proceeds of the sale of collateral through (a) the sale of the collateral at a fraudulently low price; (b) the failure to disclose to the government of Mexico that it was being defrauded by corrupt Mexican nationals, some of whom were government officials, and that Mexico could have appeared at the sale and purchased the collateral for little or no cash outlay; and (c) the acceptance from the purchaser by Manufacturers, in payment of 95.83% of the sale price, of a fraudulent and legally ineffective assignment, on information and belief given without consideration, of Prior Lien Bonds previously recognized by Manufacturers as validly held by Mexico.

45. On information and belief in order to attain the purposes of Phase I and Phase II the members of the association-in-fact developed the "blinders" theory — the notion that Manufacturers, as trustee, was absolutely required to recognize as valid and outstanding all Bonds presented for distributions of interest and principal, and was precluded from looking to extrinsic considerations that might have invalidated them for such distributions.

46. In accordance with the blinders theory the Prior Lien Bonds presented by Mexico were honored with respect to all eleven of Manufacturers' interim

distributions of interest subsequent to the effective date of the 1946 Agreement, and with respect to the proceeds of the sale of collateral. Thus Manufacturers allocated to Mexico 95.83% of the proceeds of the sale of collateral and of the December 31, 1981 interest distribution. It made similar allocations of the six interest distributions from April 1, 1972 through December 15, 1980, based upon the principal amount of Prior Lien Bonds in Mexico's possession at the respective times of such distributions. On information and belief Mexico was never allocated less than 90% of any such distribution and its allocation may have reached 95.83% long before the distribution of December 31, 1981. Thus, by means of the blinders theory, the non-assenting Bonds held by plaintiffs and others were diluted almost to non-existence.

47. On information and belief each member of the association-in-fact was fully familiar with the provisions of the 1946 Agreement and Mexico's 1948 registration statement requiring retirement of the Bonds tendered to Mexico pursuant to Plan A or Plan B. On information and belief each was also familiar with the legal principal that, apart from contract, an issuer which has acquired its defaulted bonds for a fraction of the principal and accrued interest owed on them must retire them; such an issuer may not profit from its default by according itself the status of a holder of those bonds to the pecuniary detriment of the public holders thereof.

48. Plaintiffs made clear to Manufacturers, on more than one occasion, that its treatment of Mexico as a holder was unlawful, and might result in liability. By letter dated October 18, 1978, the bank was informed by plaintiffs' then counsel that any payments of principal or interest to Mexico or its fiscal agent subsequent to the effective date of the 1946 Agreement were improper, and that it was under a duty as trustee to recapture any such payments

and apply them for the benefit of the holders of non-assenting Bonds. By letter dated January 2, 1979 Manufacturers was notified that since, at the very least, it was not clear that Mexico should be accorded the status of holder, the bank was under a fiduciary obligation to seek a declaratory judgment on the question. Manufacturers, however, did not seek a declaratory judgment, and continued to treat Mexico as a holder.

49. On information and belief each member of the association-in-fact was fully aware of plaintiffs' position with respect to Mexico's Bonds, and of plaintiffs' efforts to persuade Manufacturers to treat those Bonds as having been retired.

50. On information and belief the members of the association-in-fact attempted, through notices in connection with the interim distributions of interest, to disguise Manufacturers' treatment of Mexico as a Bond holder. In those notices Manufacturers purported to pay the portions of such distributions that it allocated to the assenting bonds not to Mexico but to The Chase Manhattan Bank ("Chase") as Fiscal Agent for Mexico under the 1946 Agreement. Provisions of the 1946 Agreement require the appointment of a Fiscal Agent to ensure compliance by Mexico with its obligations to the assenting Bond holders under Plan A and Plan B. Such obligations included the making of interest and sinking fund payments in accordance with the schedules in the Plans.

51. On information and belief Manufacturers mailed a notice of each of the seven interim interest distributions from April 1, 1972 through December 31, 1981 to all of the holders of non-assenting Prior Lien Bonds then on its records. (A photocopy of the notice received by plaintiff Hubert Park Beck in connection with the December 15, 1978 distribution is annexed hereto as Exhibit A.)

Manufacturers also, on information and belief, caused each such notice to be published in both the Wall Street Journal and The New York Times in advance of each such distribution.

52. The notices mailed and published in connection with all seven interim interest distributions are substantially identical to Exhibit A. Each of the notices contained the following statement:

> In respect of Bonds which have been stamped to indicate assent to the Offer of the United States of Mexico made pursuant to Mexico's Agreement with the International Committee of Bankers on Mexico dated February 20, 1946, the amount of such distribution will be paid to The Chase Manhattan Bank, Successor Fiscal Agent of Mexico, in accordance with the Assignments provided for in Article IX of said Agreement; and distribution will not be made to the holders of such assenting Bonds. (Emphasis in original of mailed notices only.)

The reference to Article IX of the 1946 Agreement relates to a provision requiring the assenting Bond holders, in accepting Plan A or Plan B, to assign to the Fiscal Agent any unapplied funds that Mexico may have previously paid to or deposited with the trustees under their respective bond indentures.

53. On information and belief all of the notices so mailed and published were fraudulent, in that they contained intentional misstatements and omissions of facts material to the interests of the holders of non-assenting Prior Lien Bonds.

54. On information and belief all of the members of the association-in-fact knew that, contrary to the implication in the notices, (i) Manufacturers, as trustee, was not a party to the 1946 Agreement and had no obligation for any payments to Mexico or the Fiscal Agent thereunder; (ii) Manufacturers' obligation with respect to the interim interest distributions was to distribute them to the Prior Lien Bond holders in accordance with the terms of Prior Lien Bond indenture; (iii) Mexico's obligations under the 1946 Agreement were in no way dependent upon or affected by Manufacturers' distributions from the trust, and Mexico was in full compliance with those obligations at the respective times of each such distribution; and (iv) in any event Mexico's obligations under the 1946 Agreement were fully discharged, in accordance with its terms, by January 1, 1975.

55. On information and belief each member of the association-in-fact knew and intended that the sums paid to Chase in connection with the interim distributions of interest would be remitted to Mexico. On information and belief such payments to Chase were a sham, conjured up by the members of the association-in-fact to defraud the holders of non-assenting Prior Lien Bonds by effectively treating Mexico as a holder while at the same time disguising the payments as obligations under the 1946 Agreement.

56. To holders of non-assenting Prior Lien Bonds who knew of the artifice no secret was made of the fact that the payments to Chase represented Mexico's share, as a Prior Lien Bonds holder, of each of the interest distributions. Herterich told plaintiff Hubert Park Beck, on more than one occasion, that the payments were being made to Chase as the agent of a holder, not as Fiscal Agent under the 1946 Agreement. As Herterich once stated to said plaintiff, "They have the bonds."

57. Thus on information and belief the members of the association-in-fact, in order to perpetrate the fraud upon the holders of non-assenting Prior Lien Bonds, invented mutually inconsistent theories to support the payment of the lion's share of the interim interest distributions to Mexico; each of the theories was itself untrue, and known to be untrue by each of them.

58. To the non-assenting holders who knew of the 1946 Agreement and understood its provisions the stated position of the association-in-fact was that Manufacturers, as trustee, "wore blinders"; that under the blinders theory Manufacturers was required to treat as a holder of the Bonds anyone in physical possession of them, and was prohibited from looking behind such possession under any circumstances; and that Chase, as Mexico's fiscal agent, was claiming Mexico's share of the interest distributions on the ground that Mexico was thus a holder of the Prior Lien Bonds in its possession.

59. To the other holders of non-assenting Prior Lien Bonds, who did not know of or understand the 1946 Agreement, the position of the association-in-fact was that Manufacturers, as was implicit in the notices mailed and published in connection with the interim interest distributions, was bound by the provisions of that Agreement, and was making the payments to Chase pursuant to those provisions.

60. On information and belief all of the notices mailed by Manufacturers to holders of non-assenting Prior Lien Bonds in connection with the seven interim interest distributions from April 1, 1972 through December 31, 1981 were mailed either by Herterich or by one or more Manufacturers employees acting under Herterich's supervision and control.

61. Plaintiffs submit that each such mailing was a violation, by both Manufacturers and Herterich, of 18 U.S.C. §1341, and thus constituted racketeering activity within the meaning of 18 U.S.C. §1961(1). The repeated violations of 18 U.S.C. §1341, occurring in seven distinct episodes over a period of nearly ten years, constitute, with respect to both Manufacturers and Herterich, a pattern of racketeering activity as defined in 18 U.S.C. §1961(5).

62. On information and belief all of such notices were published in The Wall Street Journal and The New York Times, and were caused to be so published either by Herterich or by one or more Manufacturers employees acting under Herterich's supervision and control.

63. Plaintiffs submit that the publication of each such notice was a violation, by both Manufacturers and Herterich, of 18 U.S.C. §1343, and thus constituted racketeering activity within the meaning of 18 U.S.C. §1961(1). The repeated violations of 18 U.S.C. §1343, occurring in seven distinct episodes over a period of nearly ten years, constitute, with respect to Manufacturers and Herterich, a pattern of racketeering activity as defined in 18 U.S.C. §1961(5).

64. On information and belief:

(i) the defrauding of plaintiffs and other holders of non-assenting Prior Lien Bonds, in connection with the seven interest distributions from April 1, 1972 through December 31, 1981, was made possible by the agreement of all of the members of the association-in-fact to perpetrate such fraud;

(ii) the association-in-fact was formed as the primary vehicle for the effectuation of the fraudulent

scheme; and

(iii) each member of the association-in-fact was involved in the planning and execution of all aspects of the fraudulent scheme, including the mailing and publication of the fraudulent notices.

B. Phase II

65. On information and belief at meetings during the 1970's, and at an accelerated pace beginning in the fall of 1981, the members of the association-in-fact engaged in discussions with Mexican nationals looking toward a sale of the collateral. These meetings took place in both New York and Mexico City.

66. Plaintiffs were not invited to participate in these meetings; indeed, they were not even told about them, or of the plan to sell the collateral. The members of the association-in-fact knew, or should have known, in view of the lengthy history of plaintiffs' interest in the Bonds and Manufacturers' and Kelley's correspondence with plaintiffs' attorneys, that plaintiffs would have participated in the discussions if they had been afforded the opportunity. In participating in these private discussions Manufacturers, as trustee, knowingly breached its duty to plaintiffs by planning the sale with one trust beneficiary (assuming, *arguendo*, that Mexico was a holder of its Bonds) to the exclusion of all others.

67. The justification of the members of the association-in-fact for these private discussions is predicated on the provisions of Article Four, Section 5 of the Prior Lien Bond indenture, which they read as empowering the holders of 75% or more in principal amount of the Prior Lien Bonds to direct the trustee to sell the collateral. On the basis of their position that Mexico held 95.83% of the issued

principal of the Prior Lien Bonds, an anticipated direction of the Mexican nationals to sell the collateral, and their reading of Article Four, Section 5, defendants proceeded with the planning of the sale.

68. Clearly, as on information and belief each defendant knew, a right in bond holders to order a sale, even if it existed, would not carry with it the power to demand the secret participation of the indenture trustee in its planning.

69. Nor, as on information and belief each defendant knew, would such a right in bond holders exculpate Manufacturers as trustee from its obligation to obtain a fair and independent valuation of the collateral for the purpose of the sale.

70. In fact, however, Article Four, Section 5 confers no right to direct a sale. Not even conditioned on the default of the issuer, its provisions are purely administrative, conferring only a right to direct where a sale should take place and the method by which it is conducted. A provision of Article Four, Section 4 does give the holders of 25% of the outstanding principal, on default by the issuer, the right to require the trustee to take, in its discretion, one or more affirmative steps to safeguard the collateral. This provision requires written notice, however, which, according to Herterich and Roberts, Manufacturers never obtained. (A photocopy of Sections 4 and 5 of Article Four of the Prior Lien Bond indenture is annexed as Exhibit B.)

71. On information and belief each defendant knew that Article Four, Section 5 did not confer upon any bond holder a right to direct a sale, but intentionally misread its provisions to confer such a right.

72. On information and belief defendants' intentional misrepresentation of the provisions of Section 5 was occasioned by their desire to distance themselves from the sale of collateral, which they knew would constitute a fraud upon the holders of non-assenting Bonds.

73. On information and belief defendants concocted their sham reading of Section 5 in order to elide the writing requirement of Section 4, which they knew the Mexican nationals would not comply with because of the fraudulent nature of the sale. On information and belief in so misreading Section 5 defendants consciously aided and abetted the fraud perpetrated upon the non-assenting Bond holders.

74. On information and belief the Mexican nationals could not comply with the writing requirement of Section 4 not only because of the fraud upon the non-assenting Bond holders, but also (and primarily) because they were already planning Phase III — the defrauding of the government and people of Mexico of the proceeds of the sale.

75. Manufacturers' position with respect to Section 5 is set forth in a letter on its letterhead, dated October 22, 1982, from William B. Dodge to Edward M. Sills, plaintiffs' then counsel. The letter (Exhibit C annexed hereto), which on information and belief was prepared under the supervision and control of Herterich, was in response to an October 7th letter from Sills to Manufacturers requesting information regarding the sale. In ¶¶ 3 and 4 of his letter Dodge sets forth the provisions of Section 5, and states Manufacturers' position that it was ordered to conduct the sale by "the holders of more than 75% of the outstanding Bonds ...."

76. On information and belief the mailing of Exhibit C, containing the fraudulent misreading of Section 5, was,

with respect to both Manufacturers and Herterich, a violation of 18 U.S.C. §1341, and thus constituted racketeering activity within the meaning of 18 U.S.C. §1961(1).

77. On information and belief each defendant knew of Exhibit C and was aware of its misinterpretation of the provisions of Section 5, but agreed to and/or acquiesced in its mailing in conjunction with the common scheme of the association-in-fact to defraud the holders of non-assenting Bonds of the proceeds of the sale of collateral.

78. Defendants' attempt to distance themselves from the sale of collateral through the fiction that the sale was directed by Mexico as a holder of Prior Lien Bonds thus failed: no right in a holder to direct a sale is conferred in Article Four, Section 5; and the written notice provision of Section 4, which does confer such a right, was (assuming *arguendo* that Mexico was a Bond holder) not complied with.

79. Thus with respect to the sale of collateral and the secret preparations therefor Manufacturers as trustee was acting completely on its own, in a conscious and willful breach of its fiduciary obligations to plaintiffs and the other non-assenting Bond holders. The damages to plaintiffs would not have occurred but for that breach.

80. On information and belief defendants' intentional misinterpretation of Section 5 did not stop with the bogus conferral of a right in bold holders to direct a sale. Defendants went further, construing that right to permit the directing bond holders to procure their own valuations of the collateral and foist them on the trustee for the purposes of the sale. Thus Manufacturers, without question and with the knowledge of the other defendants, predicated the value of the collateral sold upon valuations procured by the Mexican nationals — valuations that on

information and belief the defendants knew or should have known to reflect only a fraction of the value of the collateral, and that were procured in order to perpetrate the fraud the Mexican nationals were planning.

81. Valuations relating to three items of the collateral set forth in ¶ 21, *supra*, were obtained in preparation for the sale. The first, by Azios and Associates, a Laredo realtor, covered real estate (the "owned land") in Laredo, Robstown, Alice, and Corpus Christi, Texas. The second, by a realtor not known to plaintiffs at the present time, covered real estate in Laredo (the "leased land") which on information and belief was owned by National and leased to Tex-Mex. The third, by Lehman Brothers Kuhn Loeb, Inc. ("LBKL"), involved the determination of the value of Tex-Mex. No value was placed on any other item of collateral, such as the U.S. $960,000 Corpus Christi, San Diego & Rio Grande Narrow-Gauge Railroad Company 7% bonds due July 1, 1910 (¶ 21 (iii)), or the U.S. $1,380,000 Tex-Mex 6% bonds due July 1, 1921 (¶ 21(iv)).

82. On information and belief these valuations were procured, not by Manufacturers as trustee, but by the Mexican nationals. Manufacturers used the valuations in setting the upset price for the sale, accepting their assumptions and conclusions on the theory, promulgated by the association-in-fact, that it had no choice — that the "right" to direct the sale conferred in Article Four, Section 5 included the right to procure valuations of the collateral, direct the assumptions upon which they were made, and require the trustee to accept their results.

83. Defendant went so far as to treat the valuations as the actual property of Mexico. When, subsequent to the sale, plaintiffs' attorney asked Roberts, as Manufacturers' counsel, for copies of the valuations, Roberts stated that permission would have to be obtained from Milbank, as

Mexico's counsel. About three weeks later Roberts reported that Shapiro had informed him that Milbank had denied such permission; plaintiffs' counsel would be permitted only to look at the valuations; he would not be permitted to photocopy them, or even to make any notes about them.

84. Plaintiffs' counsel stated to Roberts that plaintiffs, as trust beneficiaries, had an absolute right to copies of the valuations, upon which the upset price for the sale had been set; and that Manufacturers, as trustee, had a clear fiduciary obligation to provide them. Roberts, however, would not relent.

85. Incredulous, but with little choice at that time, plaintiffs' attorney accepted the conditions. He was permitted to spend one and one-half noteless hours in Roberts' office at the Kelley firm, under the constant supervision of Roberts. During this time he was able to examine two of the valuations (Roberts said he did not have, and had never seen, the third). One and one-half years later Milbank furnished plaintiffs' counsel with copies of the valuations — pursuant to an order of Justice Evans in *Beck I*.

86. The valuations, all dated in May, 1982, were made on the assumption (imposed by the Mexican nationals) of the continuance of Tex-Mex as an operational railroad. On information and belief that assumption led to a valuation of the collateral that was far below its fair market value.

(1) <u>The valuation of the owned land</u>

87. The total value arrived at for the owned land was $2,245,000. Annexed hereto as Exhibit D is a photocopy of the covering letter from Azios and Associates, dated

May 12, 1982, setting forth that value. The letter is addressed not to Manufacturers as trustee, but to Andres Ramos, as President of Tex-Mex. The first paragraph of the letter makes clear that the valuation had been done at Ramos' request.

88. On information and belief each defendant knew that the appraisal of the owned land had been procured by and done under the direction of Ramos, and that Ramos was President of Tex-Mex.

89. On information and belief each defendant also knew that the figure of $2,245,000 in the valuation is about 20% of the cost of the owned land, which is set forth as $12,323,000 in Tex-Mex's balance sheet as of December 31, 1981 (Exhibit E at pp. 2 and 6 (Note A)). On information and belief each defendant knew or should have known the owned land to be worth many times its cost. Yet, confronted with an appraised value of about one-fifth of its cost, no defendant raised any question regarding the validity of the appraisal.

(2) The valuation of the leased land

90. On information and belief the leased land, in downtown Laredo, was leased from National by Tex-Mex; while some of it is used for Tex-Mex's right-of-way and related railroad purposes, the greater part of it is not.

91. On information and belief the leased land's greatest value would be realized by ceasing the operations of Tex-Mex and developing the entire tract. Even with Tex-Mex as an operating entity, however, the portion of the land not necessary for operations is extraordinarily valuable.

92. The valuation of the leased land should have been

unacceptable on its face. It does not contain a certification, by any realtor, as to its accuracy. It contains no description of any of the parcels, merely setting forth, for each, its identifying number, its appraised value per square foot, the number of square feet under consideration, and the product of the last two figures, which is set forth as the value of the parcel.

93. The average value assigned to the parcels is about $1.00 per square foot. On information and belief each defendant knew that this was a small fraction of the value of the parcels. No indication is given in the valuation of the considerations that resulted in the assigned values. Since clear title to the land was to be delivered at the sale, the existing mortgages should not have been a factor. Even after a full deduction for such encumbrances, however, on information and belief the actual values of the parcels would have been vastly greater than the appraised values.

94. There is no recapitulation or summary in the valuation setting forth the total value of the parcels. (The LBKL valuation, discussed below, sets forth $3,475,000 as such total value.) On information and belief all of the defendants knew that the inherent value of the leased land for non-railroad purposes was vastly greater than the sum of the appraised values of the parcels. On information and belief they also knew that more than half of the leased land was not necessary for railroad operations, and that even if Tex-Mex were not shut down, the value of such unnecessary portion would exceed the principal and accrued interest due on all of the outstanding Bonds. Defendants, however, raised no question as to the validity of the appraisal or its subsequent exclusion by LBKL from Tex-Mex's value. Nor did they cause any value to be allocated to the leased land as an independent item of collateral, even though it was being sold as such

(¶ 21(ii), *supra*).

(3) The LBKL valuation of Tex-Mex

95. On information and belief the LBKL valuation of Tex-Mex, procured by the Mexican nationals, was based primarily upon data provided by Tex-Mex. Annexed hereto as Exhibit F are photocopies of the cover sheet and the first (unnumbered) page of the LBKL valuation. The cover sheet bears the following legend:

> Confidential: Prepared solely for the use of the Government of Mexico and its Agencies.

The first (unnumbered) page bears the following legend:

> This is a confidential memorandum prepared solely for the use of the Government of Mexico and its Agencies. This memorandum has been prepared by Lehman Brothers Kuhn Loeb Incorporated ("LBKL") primarily from information received from The Texas Mexican Railway Company, and no independent verification of this material has been made by LBKL. LBKL makes no representations or warranties, expressed or implied, as to the accuracy or completeness of this confidential memorandum or any of its contents, and no legal liability is assumed or to be implied with respect thereto.

96. Two things stand out about the legends: that the valuation was prepared for Mexico on the basis of unverified information provided by Tex-Mex with Manufacturers, as trustee, having had nothing to do with it; and the

extraordinary length to which LBKL felt compelled to go to disclaim any responsibility for the accuracy of the valuation. On information and belief each of the defendants was fully aware of both legends.

97. In evaluating Tex-Mex LBKL compared it to some other railroads and, after discussing their similarities and differences, concluded that Tex-Mex was worth approximately from six to seven times its anticipated annual net earnings, or from $19,800,000 to $23,100,000.

98. To this figure LBKL added (i) $7,200,000, representing the portion of Tex-Mex's cash deemed not necessary for operations, and (ii) $2,200,000, representing the approximate appraised value of the owned land. (Erroneously concluding, on the basis of information furnished by Tex-Mex, that all of the leased land was necessary for railroad operations and did not add to Tex-Mex's value, LBKL excluded it entirely from its valuation of Tex-Mex.) The addition of the three figures yielded a total value of from $29,200,000 to $32,500,000 for Tex-Mex as an operating entity.

99. Manufacturers, taking the approximate average of these figures, set $31,000,000 as the upset price for the entire collateral at the sale. In so doing, no account was taken of the following:

(i) On information and belief the leased land, if committed to its most profitable use, would alone be worth more than the upset price;

(ii) On information and belief the portion of the leased land not necessary for operation of the railroad would, even if Tex-Mex were not shut down, be worth enough to pay in full the principal accrued interest on all outstanding Prior Lien Bonds and Consolidated

Mortgage Bonds.

(iii) On information and belief the value of the owned land, which cost $12,323,000 and was appraised at $2,245,000, also exceeds the total principal and accrued interest due on all outstanding Bonds.

(iv) Tex-Mex's balance sheet, as of December 31, 1981, showed accounts receivable of $6,300,000 (Exhibit E, p. 2). No upward adjustment in the value of Tex-Mex was made for this, despite LBKL's determination that the railroad had more working capital than it needed.

(v) Tex-Mex's balance sheet, as of December 31, 1981, sets forth current liabilities of $2,340,000 in principal and $6,486,000 in accrued interest due on bonds in default (*Id.* at p. 3). As Note B to the schedule makes clear, (*Id.* at pp. 6 and 7), the bonds are the very ones being sold as part of the collateral: the $960,000 Corpus Christi, San Diego & Rio Grande Narrow Gauge Railroad Company 7% bonds due July 1, 1910 (¶ 21 (iii)), and the $1,380,000 Tex-Mex 6% Gold Bonds due July 1, 1921 (¶ 21(iv)). According to the last paragraph of Note B, Tex-Mex was paying in full the currently accruing annual interest of $150,000 on the bonds. And at the completion of the sale the purchaser of the collateral would be able to write himself a check from land- , cash- , and receivable-rich Tex-Mex, in the sum of $8,826,000 in payment of the principal and accrued interest on the bonds. Yet no value at all was placed upon the bonds for the purpose of the sale.

(vi) Tex-Mex was, at the time of the LBKL valuation, in the process of developing an industrial park containing twenty-four parcels. The company had, according to the valuation, already sold one parcel, received 20% down payments on nineteen more, and was close to obtaining commitments on the last four. On information

and belief LBKL wrongly excluded the value of the industrial park from its valuation of Tex-Mex. No upward adjustment in the value of Tex-Mex was made to reflect this investment.

(vii) The Purchase Agreement, which on information and belief was drafted for Manufacturers by Kelley under Roberts' supervision, does not call for the apportionment of Tex-Mex's 1982 net income. Thus, despite the fact that the closing took place on November 29th, the entire net income for calendar year 1982 passed to the purchaser of the collateral. Tex-Mex had net income of $7,924,000 before taxes during the previous year — calendar year 1981 (*Id.*, at p. 4).

(viii) On information and belief no value was attributed to the interest in the International Railroad Bridge being sold as part of the collateral (¶ 21 (v)).

100. On information and belief each defendant was, prior to the sale, fully aware of all of the facts set forth in ¶ 99, *supra*.

101. On information and belief Shapiro, during the first 4-1/2 months of 1982, engaged in interstate telephone conversations regarding the valuation of the owned land, the valuation of the leased land, the LBKL valuation of Tex-Mex, and the values of other items of collateral. On information and belief such conversations were held with one or more of J. M. Azios, Andres Ramos, perhaps other officers of Tex-Mex, and other Mexican nationals.

102. On information and belief during such telephone conversations Shapiro counselled such persons as to the contents of such valuations and their use in the sale of the collateral. On information and belief at the respective

times of such conversations Shapiro knew or had reason to believe that, for reasons set forth in ¶ 99, *supra*, and perhaps others, each of such valuations would or did substantially understate the value of the property under consideration. On information and belief he also knew at such times that certain items of collateral with substantial value, such as the bonds referred to in ¶ 99 (v), *supra*, would not be professionally appraised at all for the sale. On information and belief he also knew at such times that Manufacturers intended to predicate the upset price for the sale on the valuations thus obtained, and that the net proceeds of the sale would, as a likely result, be considerably less than the fair market value of the collateral.

103. On information and belief each of such telephone conversations was, with respect to both Milbank and Shapiro, a violation of 18 U.S.C. §1343, and thus constituted racketeering activity within the meaning of 18 U.S.C. §1961(1). On information and belief the aggregate of such conversations constituted, with respect to both Milbank and Shapiro, a pattern of racketeering activity within the meaning of 18 U.S.C. §1961(5).

104. While the appraisals were being made, the meetings between defendants and the Mexican nationals continued. At a January 1982 meeting in New York an officer of Banco de Mexico told Herterich and Roberts to proceed with the sale; this instruction was subsequently rescinded. At an April 1982 meeting in Mexico City attended by Herterich and Roberts a provisional go-ahead was given, subject to confirmation.

105. In due course a "direction" was given to defendant to schedule the sale. On information and belief, and according to Roberts, an officer of Banco de Mexico (where Mexico's Prior Lien Bonds were held) telephoned the direction from Mexico City to Shapiro, as Mexico's

counsel; Shapiro relayed it to Roberts as counsel to Manufacturers. Shapiro's participation in this international telephone conversation, which precipitated a sale that on information and belief he and Milbank knew to constitute a fraud upon the holders of non-assenting Bonds, was, as to both Milbank and Shapiro, a violation of 18 U.S.C. §1343, and thus constituted racketeering activity within the meaning of 18 U.S.C. §1961(1).

106. On information and belief no attempt was ever made by any defendant to confirm the authority of the officer who gave the direction, despite the fact that each of them knew he was not an official of the Mexican government. On information and belief, and according to Herterich and Roberts, no writing embodying the order was ever requested or received by any defendant. Despite requests therefor, Roberts refused to give the name of the officer to plaintiffs' counsel.

107. The sale was scheduled to take place in Laredo, on November 2, 1982.

108. On or about August 10, 1982 a Notice of the sale of collateral was published in both The Wall Street Journal and The New York Times. (A photocopy of the Notice of Sale is annexed hereto as Exhibit G.)

109. On information and belief the Notice of Sale was fraudulent, for the following reasons, all of which were known to each defendant:

(i) The Notice states that the sale is to be conducted by Manufacturers as trustee under the Prior Lien Bond indenture. On information and belief all of the defendants knew that the collateral being sold secured the Consolidated Mortgage Bonds as well, and that the true value of the collateral exceeded the principal and accrued

interest owed on the outstanding Bonds of both series. The Notice, in referring only to the Prior Lien Bonds, failed to inform the Consolidated Mortgage Bond holders of their interest in the sale.

(ii) The $31,000,000 upset price set forth in the Notice further implied that the Consolidated Mortgage Bond holders had no interest in the sale, since that sum was far less than the principal and accrued interest owed on the more senior Prior Lien Bonds. As is set forth above, the $31,000,000 figure was based upon the fraudulently low value set on the collateral by defendants.

(iii) The sum of U.S. $81,704,625 set forth in the Notice as due on the Prior Lien Bonds was, on information and belief, less than half the principal and accrued income actually owing on them. According to Herterich and Roberts the interest portion of the amount due was computed on the basis of simple interest. The indentures for both series of Bonds require compounding, however. Indeed, on information and belief Manufacturers' predecessor trustee, Central Hanover Bank and Trust Company, actually compounded interest for the purpose of determining the amount owed on the Prior Lien Bonds in a 1938 lawsuit against Ferrocarriles. On information and belief each defendant knew the $81,704,625 figure set forth in the Notice to be a fraction of the amount due on the Prior Lien Bonds.

(iv) The Notice fails to disclose that the $31,000,000 upset price was based upon valuations procured not by Manufacturers as trustee, but by the Mexican nationals, whose interests were antithetical to those of the holders of the non-assenting Bonds.

110. On information and belief the publications of the Notice of Sale in The Wall Street Journal and The New

York Times were done on behalf of Manufacturers under the supervision and control of Herterich. Each such publication was, with respect to both Manufacturers and Herterich, a violation of 18 U.S.C. §1343, and therefore constituted racketeering activity within the meaning of 18 U.S.C. §1961(1); both publications constituted, with respect to those defendants, a pattern of racketeering activity within the meaning of 18 U.S.C. §1961(5).

111. On information and belief on or about October 5, 1982 Roberts, on Kelley letterhead, wrote to all persons listed on Manufacturers' books as holders of Prior Lien Bonds, informing them of the sale. (A photocopy of Roberts' letter to plaintiff Hubert Park Beck is annexed hereto as Exhibit H.) On information and belief each such letter included a copy of the fraudulent Notice of Sale. The mailing of each of such letters was, with respect to both Kelley and Roberts, a violation of 18 U.S.C. §1341, and therefore constituted racketeering activity within the meaning of 18 U.S.C. §1961(1).

112. On information and belief the publications and mailings of the Notice of Sale were done pursuant to the agreement of each of the defendants as a member of the association-in-fact, in a conscious attempt to defraud the holders of non-assenting Bonds of their rightful share of the true value of the collateral.

113. On or about October 18, 1982 Herterich and William B. Dodge, his assistant, traveled to Mexico City and, at Banco de Mexico, counted Mexico's Prior Lien Bonds, verifying that $22,040,500 in principal amount was on hand.

114. The sale took place as scheduled on November 2nd. Present were, among others, Herterich, who conducted the sale on behalf of Manufacturers; Roberts, as

counsel to Manufacturers; and Shapiro, as counsel to Mexico.

115. The sale began and concluded with one bid — by a corporation called Mexrail, Inc., for the upset price of $31,000,000. There being no other bidders, Mexrail's bid was accepted by Herterich and the auction ended.

116. Manufacturers allocated $1,292,700, or 4.17% of the proceeds of the sale, to the holders of non-assenting Prior Lien Bonds; this represented the $959,500 in face amount (or 4.17%, of the original $23,000,000 issue) that had not come into Mexico's possession over the years, either by tender under the 1946 Agreement or through open-market purchases.

117. The balance of $29,707,300 was paid, not in money, but by a purported tender by Mexrail and acceptance by Manufacturers of Mexico's $22,040,500 in Prior Lien Bonds. (Article Four, Section 13 of the Prior Lien Bond indenture permits a holder of those bonds to tender them at a sale of the collateral and receive a credit against the sale price for his ratable share of the sale proceeds, based upon the principal and accrued interest due on his bonds. This will be more fully discussed below, in connection with Phase III.)

118. On information and belief on or about December 20, 1982 Manufacturers mailed a notice to all of the holders of Prior Lien Bonds on its books that, from the proceeds of the sale, it would distribute, on account of accrued and unpaid interest, $1,355 per $1,000 Prior Lien Bond. (A photocopy of the notice received by plaintiff Hubert Park Beck is annexed hereto as Exhibit I.)

119. On information and belief Manufacturers also caused the notice so mailed to be published in The Wall

Street Journal and The New York Times on or about December 21, 1982.

120. The notice so mailed and published was in the same form and contained substantially the same language as the notices mailed and published in connection with the seven interim distributions of interest in Phase I (see Exhibit A hereto). In particular, the notice contained the statement, set forth in ¶ 52, *supra*, to the effect that the portion of the distribution allocable to the assenting Prior Lien Bonds was being made not to "the holders," but to Chase, as Fiscal Agent under the 1946 Agreement.

121. On information and belief the notice was fraudulent for the reasons set forth in ¶ 54, *supra*, and for the following reasons:

(i) The notice failed to disclose that the $31,000,000 sale price was based upon fraudulently understated values of the collateral.

(ii) The notice stated that the amount of the distribution on the assenting bonds was being made to Chase as Fiscal Agent under the 1946 Agreement. As each defendant knew, there was in fact to be no such distribution. Only $1,292,700 in cash had been realized on the sale, and this sum had been set aside by Manufacturers for the portion of the distribution allocable to the non-assenting bonds. The balance of $29,707,300 had been paid, not in money, but by Mexrail's purported tender of the assenting bonds themselves. There was simply no money to pay to Chase, and on information and belief no such payment was ever made.

(iii) The notice failed to disclose that Manufacturers, as trustee, knew that Mexrail's purported tender of the bonds had been shot through with fraud,

and accordingly should not have treated Mexrail as a holder even if the bonds had been valid and outstanding.

122. On information and belief the mailings and publications of the notice were done on behalf of Manufacturers under the supervision and control of Herterich. Each such mailing was, with respect to both Manufacturers and Herterich, a violation of 18 U.S.C. §1341, and therefore constituted racketeering activity within the meaning of 18 U.S.C. §1961(1). Each such publication was, with respect to both Manufacturers and Herterich, a violation of 18 U.S.C. §1343, and therefore also constituted racketeering activity within the meaning of 18 U.S.C. §1961(1). The aggregate of such mailings and publications constituted, with respect to those defendants, a pattern of racketeering activity within the meaning of 18 U.S.C. §1961(5).

123. On information and belief each of the defendants, as a member of the association-in-fact, knew that the notice was fraudulent, for the reasons set forth in ¶ 121, *supra*. On information and belief the mailings and publications of the notice were done pursuant to the agreement of each of the defendants as a member of the association-in-fact, in a conscious attempt to defraud the holders of non-assenting Bonds of their rightful share of the true value of the collateral.

124. On information and belief Manufacturers, in connection with the distribution of the proceeds of the sale of collateral, mailed a Letter of Transmittal to each holder of non-assenting Prior Lien Bonds on its books. This letter, when completed and executed by a holder and returned to Manufacturers, would qualify such holder for his share of the distribution. (A copy of the Letter of Transmittal mailed to plaintiff Hubert Park Beck is annexed hereto as Exhibit J.)

125. On information and belief, for the reasons set forth in ¶ 121, *supra*, the Letter of Transmittal was fraudulent.

126. On information and belief the mailings of the Letter of Transmittal were done on behalf of Manufacturers under the supervision and control of Herterich. Each such mailing was, with respect to both Manufacturers and Herterich, a violation of 18 U.S.C. §1341, and therefore constituted racketeering activity within the meaning of 18 U.S.C. §1961(1).

127. On information and belief each of the defendants, as a member of the association-in-fact, knew that the Letter of Transmittal was fraudulent, for the reasons set forth in ¶ 121, *supra*. On information and belief the mailings of the Letter of Transmittal were done pursuant to the agreement of each of the defendants as a member of the association-in-fact, in a conscious attempt to defraud the holders of non-assenting Bonds of their rightful share of the true value of the collateral.

C. Phase III

128. On information and belief during the spring of 1982, and perhaps before, defendants were informed by the Mexican Nationals that payment for the collateral sold would likely be made, in substantial part, with the Prior Lien Bonds in Mexico's possession. (As is set forth in ¶ 117, *supra*, Article Four, Section 13 of the Prior Lien Bond indenture permits a holder of those bonds to tender them at a sale of the collateral and receive a credit against the sale price for his ratable share of the sale proceeds, based upon principal and accrued interest due on his bonds. Article Four, Section 13 of the Consolidated Mortgage Bond indenture contains an identical provision.)

129. Defendants should not have been surprised by this. Given their position that Mexico was a holder of 95.83% of the Prior Lien Bonds, and their calculation that $81,704,625 was owing on those bonds, they knew that Mexico could appear at the sale, bid as high as $81,704,625 for the collateral, and receive a credit of ($81,704,625) x (0.9583), or $78,297,542, against the sale price. Thus Mexico would have had to pay only $3,407,083 in cash for its $81,704,625 bid, and receive in return $31,000,000 worth of property (even at defendants' fraudulently understated value of the collateral). Mexico could begin by bidding the upset price of $31,000,000, for which it would receive a credit of ($31,000,000) x (0.9583), or $29,707,300, leaving only $1,292,700 to be paid in cash.

130. Indeed Mexico could cheaply have bid far more than $81,704,625 for, as each defendant knew, it could have tendered its Consolidated Mortgage Bonds and received a credit of 95.50% against any portion of the purchase price in excess of that amount.

131. Actually, as on information and belief each defendant knew, the cash portion to be paid by Mexico would in reality have been considerably less than the amounts set forth above, for Mexico was a substantial creditor of Tex-Mex. As of December 31, 1981 Tex-Mex owed Mexico $1,061,000. (This figure is carried as a current liability on Tex-Mex's balance sheet as of December 31, 1981, Exhibit E at p. 3.) On information and belief the debt had grown, and was considerably higher, at the time of the sale.

132. But taking the December 31, 1981 figure of $1,061,000 as the amount owed at the time of the sale, each defendant knew that Mexico could bid the upset price of $31,000,00 for a cash commitment of only $231,700 ($1,292,700 less $1,061,000); and that it could bid as high as $81,704,625 with a cash outlay of only $2,346,083

($3,407,083 less $1,061,000). Mexico could obtain a credit of $1,061,000 against the cash portion of the sale price by tendering an instrument of forgiveness to Tex-Mex in that amount; Manufacturers, which as trustee held 24,991 of Tex-Mex's issued and outstanding 25,000 common shares, could then have written a check from cash-rich Tex-Mex to itself as trustee, to be distributed to the non-assenting holders.

133. On information and belief, however, during the summer of 1982 defendants learned that the Prior Lien Bonds in Mexico's possession would be tendered, not by Mexico, but by Mexrail. As on information and belief each defendant knew, Mexrail was a newly-formed Delaware corporation, wholly owned by Transportacion Maritima Mexicana, S.A. ("TMM"), which was in turn owned approximately 70% by Mexican nationals and approximately 30% by the government of Mexico.

134. On information and belief Shapiro and Roberts, during the summer and fall of 1982, engaged in interstate and international telephone conversations regarding the sale. On information and belief such conversations were held with one or more of Andres Ramos, President of Tex-Mex; Roberto Dieguez Armas, Mexico's Director of the Public Debt and a director of Tex-Mex; one or more other officers of Tex-Mex; and one or more officers of Banco de Mexico.

135. On information and belief during these conversations Shapiro and Roberts were informed that Mexrail did not wish to physically tender the bonds, but wished instead to tender one or more assignments of the bonds in payment of 95.83% of the sale price. On information and belief Shapiro and Roberts were further informed that neither Mexrail nor anyone else would enter into any written agreement with Mexico that would set forth the

receipt of any monetary consideration by Mexico for the assignment of its bonds.

136. On information and belief each defendant knew, or should have strongly suspected at this point, that the Mexican nationals were engaged in a criminal conspiracy to defraud their own government and fellow countrymen. From the refusal of the Mexican nationals to provide Manufacturers with a written direction to sell the collateral (¶ 73, *supra*) to their refusal to provide a written agreement setting forth Mexico's consideration for the assignment of its bonds, the impending transaction appeared to be rife with fraud.

137. Nevertheless, on information and belief during his foregoing telephone conversations Roberts discussed the contents of the assignments and transmitted Manufacturers' agreement to accept them, without any underlying written agreement setting forth the amount of consideration received by Mexico therefor, in payment of 95.83% of the sale price.

138. On information and belief each of such telephone conversations was, with respect to both Kelley and Roberts, a violation of 18 U.S.C. §1343, and therefore constituted racketeering activity within the meaning of 18 U.S.C. §1961(1). The aggregate of those conversations constituted a pattern of racketeering activity within the meaning of 18 U.S.C. §1961(5).

139. Milbank and Shapiro, as counsel to the government of Mexico, were under a particularly strong professional obligation at this point. They knew that Mexico could appear at the sale and, by tendering its Prior Lien Bonds and an instrument of forgiveness, bid the $31,000,000 upset price for a cash outlay of only $231,700, and bid $81,704,625 for a cash outlay of only $2,346,083.

They were thus under a clear duty to counsel their client to appear at the auction, and to outbid everyone else in the room for the collateral.

140. Milbank and Shapiro should, at the very least, have taken steps to ensure that Mexico was compensated for its bonds.

141. On information and belief Milbank and Shapiro did neither. On information and belief during Shapiro's telephone conversations set forth in ¶¶ 134 and 135, *supra*, they actually aided and abetted the defrauding of their client by counseling the Mexican nationals with respect to the drafting and execution of the assignments. On information and belief among the matters discussed during those conversations were the contents of the assignments and the identities of the persons who would execute and witness them.

142. On information and belief each of such telephone conversations was, with respect to both Milbank and Shapiro, a violation of 18 U.S.C. §1343, and constituted racketeering activity within the meaning of 18 U.S.C. §1961(1). The aggregate of those conversations constituted, with respect to those defendants, a pattern of racketeering activity within the meaning of 18 U.S.C. §1961(5).

143. Manufacturers, as trustee, was under a duty as well — to the holders of non-assenting Bonds such as plaintiffs. If Mexico had been apprised of its rights it would surely have been a bidder at the sale, and would have continued to bid in the face of escalating opposing bids. Under these circumstances the sale price, and thus the value of the portion of the proceeds allocable to the non-assenting Bonds, would have been substantially increased.

144. On information and belief Manufacturers did nothing to inform the Mexican government of its rights, however. As Roberts told plaintiffs' counsel "We [that is, all of the defendants] didn't look behind what we were told about the Mexican side of the sale."

145. As is set forth above, the sale of collateral was held in Laredo on November, 2, 1982. Mexrail, the only bidder, was awarded the collateral for the upset price of $31,000,000.

146. In payment of the purchase price Mexrail tendered a check for $1,292,700, a certification, and two assignments. The $1,292,700, or 4.17% of the sale price, was allocated to the holders of non-assenting Prior Lien Bonds.

147. The certification, on the letterhead of Banco de Mexico, sets forth that that bank is holding, on behalf of Mexico, $22,040,000 in principal amount of Prior Lien Bonds. It is signed by Emilio Gutierrez Moller and Hector Reyes Retana, two officers of the bank. (A photocopy of the certification is annexed hereto as Exhibit K.)

148. The assignments were both dated November 2nd and set forth the transfer of $22,040,500 in principal amount of Prior Lien Bonds. The first assignment (Exhibit L annexed hereto) was from Mexico to TMM, the second (Exhibit M) was from TMM to Mexrail.

149. The assignment from Mexico to TMM is a one-page document bearing both a printed letterhead and a typed "letterhead." The assignment recites that "for value received" Mexico was assigning all of its Prior Lien Bonds to TMM. It is signed by C. P. Roberto Dieguez Armas, whose title is set forth as Director of the Public Debt (and who also apparently witnessed the execution

of the assignment from TMM to Mexrail). The assignment is not notarized, although notarization is an implicit requirement of Article Six, Section 2 of the Prior Lien Bond indenture.

150. On information and belief: no questions were asked by any defendant as to how TMM had obtained its assignment, or whether any consideration had been paid for it; no inquiry was made as to why, if TMM had the $29,707,300 balance of the sale price, it did not pay it directly, instead of first buying the bonds from Mexico and then tendering them to Manufacturers; no question was raised regarding the absence of a written agreement between TMM and Mexico setting forth the monetary consideration for the assignment; no question was asked regarding the authority of Mr. Dieguez Armas to assign the bonds for Mexico, despite the deficiencies of the assignment itself.

151. On information and belief Mexico received no consideration at all for its assignment to TMM.

152. Mr. Dieguez Armas was, as on information and belief all of the defendants knew, a director of Tex-Mex at the time, with a fiduciary responsibility to free that corporation from the constraint of the trust. Yet, despite his clear conflict of interest, not a question was raised concerning the propriety of his having executed the assignment to TMM on behalf of Mexico, or of his witnessing the subsequent assignment to Mexrail.

153. On information and belief, and according to Roberts, the assignments were drafted under the supervision of Milbank and Shapiro, and were executed in Laredo under Shapiro's supervision on the morning of November 2, 1982, shortly before the sale.

154. On information and belief, and according to Roberts, the certification and assignments were hand-carried to the sale by Shapiro moments before the opening of the bidding.

155. On November 3, 1982, Edward M. Sills, then counsel to plaintiffs, telephoned Roberts. Roberts informed Sills that the sale had taken place on the previous day, that Mexrail had purchased the property for $31,000,000, and that Mexico's Prior Lien Bonds would likely be used to defray a major portion of the purchase price.

156. On information and belief Roberts also stated to Sills that the sale was subject to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. §1311, which provides for a waiting period of at least thirty days between the formation of a contract of sale and its closing; Roberts stated that Manufacturers, as trustee, intended to procure a waiver of that requirement.

157. Shortly thereafter plaintiff Hubert Park Beck telephoned the Federal office with jurisdiction over the enforcement of the statute, recited some of the facts surrounding the sale, and requested that no waiver of the statute's provisions be granted. He was told that none would be; on information and belief none ever was.

158. Nevertheless defendants proceeded with the closing on November 29, 1982. On information and belief they did so in the full knowledge that they were in violation of Hart-Scott-Rodino, but could not delay the closing because of pressing political considerations of the Mexican nationals: the closing had to occur prior to December 1st, when the incumbent Mexican administration would come to a close, and a new President, Miguel de la Madrid, would be sworn in.

159. On information and belief present at the closing were, among others, Herterich, Shapiro, Roberts, an associate in each of Milbank and Kelley, and a senior official in the Foreign Department of Banco de Mexico.

160. On information and belief the closing involved further irregularities. Burlingham Underwood & Lord, counsel to Mexrail, delivered its legal opinion to the effect that all necessary governmental consents or approvals for the transfer of Tex-Mex had been obtained by Mexrail. Such an opinion is required under §§ 10 and 11(e) of the Purchase Agreement, which on information and belief was drafted for Manufacturers by Kelley under the supervision and control of Roberts.

161. The opinion of the Burlingham firm was expressly restricted to the United States, however; despite the fact that Tex-Mex had substantial operations in Mexico no legal opinion was offered or requested relating to contents or approvals required by the government of Mexico or any its agencies or subdivisions.

162. On information and belief the omission of an opinion regarding Mexican consents or approvals was a conscious decision taken and concurred in by each of the defendants. Such an opinion would necessarily have had to be given by a Mexican law firm, and such consents or approvals by one or more agencies of the Mexican government. On information and belief the Mexican nationals, who were in the process of defrauding their government and fellow citizens, were committed to maintaining a veil of secrecy over the transaction, and had ruled out the procurement of any legal opinion that might have required any participation of the Mexican government in its consummation. On information and belief defendants, in order to aid and abet the fraud, failed to require such an opinion.

163. At the closing Mexrail was not required by Manufacturers, as trustee, to physically tender the Prior Lien Bonds that had purportedly been assigned by Mexico. Indeed on information and belief, despite the presence of an officer of Banco de Mexico, Manufacturers did not even receive a certification, in the form of Exhibit K, to the effect that Exhibit K had been superseded, the bonds had been cancelled, and the cancelled bonds were now being held by Banco de Mexico for Manufacturers. Thus, after the closing, Banco de Mexico was left with "live" bonds that Manufacturers had, for over forty years, recognized as valid, outstanding, and owned by Mexico.

164. On information and belief neither the tender of the bonds nor such superseding certification was required because each defendant knew that neither would or could be given: that the transaction involved criminal fraud on the part of the Mexican nationals, and none of them would involve himself in removing the bonds from Banco de Mexico or certifying that they had been cancelled and were now being held there for Manufacturers.

165. On information and belief, by their participation and acquiescence in the events constituting Phase III, defendants caused a vast fortune that Manufacturers would otherwise have distributed to Mexico to pass to Mexrail, a corporation substantially owned and fully controlled by Mexican nationals.

166. As a result of defendants' actions plaintiffs have suffered injury to their property within the meaning of 18 U.S.C. §1964(c). Had the Mexican government not been defrauded, but rather been informed of its rights with regard to the sale, it would surely have appeared and outbid Mexrail or any other bidder for the collateral. Under these circumstances the sale price would have

exceeded the $31,000,000 paid by Mexrail, and the portion of the sale proceeds allocated to plaintiffs and the other holders of non-assenting Prior Lien Bonds would have been substantially in excess of the $1,[illegible]92,700 actually allocated by Manufacturers.

COUNT ONE
(Against all defendants)

167. Plaintiffs repeat and allege the allegations of paragraphs 1 through 166 hereof.

168. Each of the defendants was a member of the association-in-fact set forth in ¶¶ 41 and 42, *supra*, during the respective periods set forth therein.

169. The association-in-fact was an enterprise within the meaning of 18 U.S.C. §1961(4).

170. That enterprise, which regularly operated in New York, Texas, and Mexico, was engaged in interstate and foreign commerce, and was involved in activities which affected interstate and foreign commerce.

171. Each of the defendants, during his or its membership in that enterprise, and in the course of his or its conduct of and/or participation in the affairs of that enterprise, committed multiple violations of 18 U.S.C. §1341 and/or 18 U.S.C. §1343, as more particularly set forth above.

172. Each such violation constitutes racketeering activity within the meaning of 18 U.S.C. §1961(1).

173. Such multiple episodes of racketeering activity by each defendant constitute, with respect to each defendant, a pattern of racketeering activity within the

meaning of 18 U.S.C. §1961(5).

174. All of the foregoing constitutes, with respect to each defendant, a violation of 18 U.S.C. §1962(c).

175. As a result of defendants' violations of 18 U.S.C. §1962(c) plaintiffs have suffered injury to their property within the meaning of 18 U.S.C. §1964(c).

COUNT TWO
(Against Herterich, Shapiro, and Roberts)

176. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 166 hereof.

177. At the respective times set forth above Herterich was employed by Manufacturers, and Shapiro and Roberts were employed by and/or associated with, respectively, Milbank and Kelley.

178. Each of Manufacturers, Milbank, and Kelley is and has continuously been, throughout the relevant times herein, an enterprise within the meaning of 18 U.S.C. §1961(4).

179. During the relevant times herein each of Manufacturers, Milbank, and Kelley maintained, for the regular conduct of business, offices in several states and/or districts in the United States, and abroad. Accordingly at such times each of them was engaged in interstate and foreign commerce, and was involved in activities which affect interstate and foreign commerce.

180. Each of Herterich, Shapiro, and Roberts, during his employment and/or association with, respectively, Manufacturers, Milbank, and Kelley, and in the course of his conduct of and/or participation in its affairs,

committed multiple violations of 18 U.S.C. §1341 and/or 18 U.S.C. §1343, as more particularly set forth above.

181. Each such violation constitutes racketeering activity within the meaning of 18 U.S.C. §1961(1).

182. Such multiple episodes of racketeering activity by Herterich, Shapiro, and Roberts constitute, with respect to each of them, a pattern of racketeering activity within the meaning of 18 U.S.C. §1961(5).

183. All of the foregoing constitutes, with respect to each of Herterich, Shapiro and Roberts, a violation of 18 U.S.C. §1962(c).

184. As a result of such violations of 18 U.S.C. §1962(c) plaintiffs have suffered injuries to their property within the meaning of 18 U.S.C. §1964(c).

COUNT THREE
(Against Manufacturers, Milbank, and Kelley)

185. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 166 hereof.

186. Each of Manufacturers, Milbank, and Kelley, during the period from October 15, 1970 to the present, committed multiple violations of 18 U.S.C. §1341 and/or 18 U.S.C. §1343, as more particularly set forth above.

187. Each of such violations constitutes racketeering activity within the meaning of 18 U.S.C. §1961(1).

188. Such multiple episodes of racketeering activity by Manufacturers, Milbank, and Kelley constitutes, with respect to each of them, a pattern of racketeering activity within the meaning of 18 U.S.C. §1961(5).

189. Each of Manufacturers, Milbank, and Kelley received, directly and/or indirectly, through trustee's commissions, legal and/or other fees, and/or other means, income from their respective patterns of racketeering activity.

190. Each of Manufacturers, Milbank, and Kelley used and/or invested, directly or indirectly, part of such income, or the proceeds thereof, in

(i) the acquisition of an interest in and/or the establishment and/or operation of the association-in-fact, consisting of all of the defendants, set forth in ¶¶ 41 and 42, *supra;* and/or

(ii) the operation of, respectively, Manufacturers, Milbank, and Kelley.

191. Each of Manufacturers, Milbank, Kelley, and the association-in-fact is an enterprise within the meaning of 18 U.S.C. §1961(4).

192. The association-in-fact, which regularly operated in New York, Texas, and Mexico, was engaged in interstate and foreign commerce, and was involved in activities which affected interstate and foreign commerce.

193. During the relevant times herein each of Manufacturers, Milbank, and Kelley maintained, for the regular conduct of business, offices in several states and/or districts in the United States, and abroad. Accordingly at such times each of them was engaged in interstate and foreign commerce, and was involved in activities which affect interstate and foreign commerce.

194. All of the foregoing constitutes, with respect to

Manufacturers, Milbank, and Kelley, a violation of 18 U.S.C. §1962(a).

195. As a result of such violations of 18 U.S.C. §1962(a), plaintiffs have suffered injuries to their property within the meaning of 18 U.S.C. §1964(c).

COUNT FOUR
(Against all defendants)

196. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 166 hereof.

197. Each of the defendants, during the period from October 15, 1970 to the present, committed multiple violations of 18 U.S.C. §1341 and/or 18 U.S.C. §1343, as more particularly set forth above.

198. Each of such violations constitutes racketeering activity within the meaning of 18 U.S.C. §1961(1).

199. Such multiple episodes of racketeering activity by defendants constitutes, with respect to each of them, a pattern of racketeering activity within the meaning of 18 U.S.C. §1961(5).

200. Each of the defendants, through such pattern of racketeering activity, acquired and/or maintained, directly and/or indirectly, an interest in and/or control of the association-in-fact set forth in ¶¶ 41 and 42, *supra*.

201. That association-in-fact is an enterprise within the meaning of 18 U.S.C. §1961(4).

202. The association-in-fact, which regularly operated in New York, Texas, and Mexico, was engaged in interstate and foreign commerce, and was involved in

activities which affected interstate and foreign commerce.

203. All of the foregoing constitutes, with respect to all of the defendants, a violation of 18 U.S.C. §1962(b).

204. As a result of such violations of 18 U.S.C. §1962(b), plaintiffs have suffered injuries to their property within the meaning of 18 U.S.C. §1964(c).

COUNT FIVE
(Against Herterich, Shapiro, and Roberts)

205. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 166 hereof.

206. Each of Herterich, Shapiro, and Roberts, during the period from October 15, 1970 to the present, committed multiple violations of 18 U.S.C. §1341 and/or 18 U.S.C. §1343, as more particularly set forth above.

207. Each of such violations constitutes racketeering activity within the meaning of 18 U.S.C. §1961(1).

208. Such multiple episodes of racketeering activity by Herterich, Shapiro, and Roberts constitutes, with respect to each of them, a pattern of racketeering activity within the meaning of 18 U.S.C. §1961(5).

209. Herterich, Shapiro, and Roberts, through such pattern of racketeering activity, respectively maintained, directly and/or indirectly, an interest in and/or control of, Manufacturers, Milbank, and Kelley.

210. Each of Manufacturers, Milbank, and Kelley is an enterprise within the meaning of 18 U.S.C. §1961(4).

211. During the relevant times herein, each of Manufacturers, Milbank, and Kelley has maintained, for the regular conduct of business, offices in several states and/or districts in the United States, and abroad. Accordingly, each of them is engaged in interstate and foreign commerce, and is involved in activities which affect interstate and foreign commerce.

212. All of the foregoing constitutes, with respect to Herterich, Shapiro, and Roberts, a violation of 18 U.S.C. §1962(b).

213. As a result of such violations of 18 U.S.C. §1962(b), plaintiffs have suffered injuries to their property within the meaning of 18 U.S.C. §1964(c).

COUNT SIX
(Against all defendants)

214. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 166 and 168 through 174 hereof.

215. As is set forth above, each of the defendants willfully aided and abetted the defrauding of non-assenting Bondholders in Phases I and II, and the defrauding of the government and people of Mexico in Phase III.

216. Defendants (individually and collectively) aided and abetted such fraud through the agreement of each to participate in its planning and execution, and through their acts and omissions adverted to above in connection with the carrying out of the fraudulent scheme.

217. In the course of so aiding, abetting, and participating in such fraud each of the defendants consciously and willfully conspired, with all of the other defendants, to commit the violations of 18 U.S.C. §1962(c) contained

in Count One hereof.

218. Each such conspiracy constitutes, with respect to each defendant, a violation of 18 U.S.C. §1962(d).

219. As a result of such violations of 18 U.S.C. §1962(d), plaintiffs have suffered injuries to their property within the meaning of 18 U.S.C. §1964(c).

COUNT SEVEN
(Against all defendants)

220. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 166, 177 through 183, 215, and 216 hereof.

221. In the course of so aiding, abetting, and participating in such fraud each of the defendants consciously and willfully conspired, with all of the other defendants, to commit the violations of 18 U.S.C. §1962(c) contained in Count Two hereof.

222. Plaintiffs repeat and reallege the allegations of paragraphs 218 and 219 hereof.

COUNT EIGHT
(Against all defendants)

223. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 166, 186 through 194, 215, and 216 hereof.

224. In the course of so aiding, abetting, and participating in such fraud each of the defendants consciously and willfully conspired, with all of the other defendants, to commit the violations of 18 U.S.C. §1962(a) contained in Count Three hereof.

225. Plaintiffs repeat and reallege the allegations of paragraphs 218 and 219 hereof.

COUNT NINE
(Against all defendants)

226. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 166, 197 through 203, 215, and 216 hereof.

227. In the course of so aiding, abetting, and participating in such fraud each of the defendants consciously and willfully conspired, with all of the other defendants, to commit the violations of 18 U.S.C. §1962(b) contained in Count Four hereof.

228. Plaintiffs repeat and reallege the allegations of paragraphs 218 and 219 hereof.

COUNT TEN
(Against all defendants)

229. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 166, 206 through 212, 215, and 216 hereof.

230. In the course of so aiding, abetting, and participating in such fraud each of the defendants consciously and willfully conspired, with all of the other defendants, to commit the violations of 18 U.S.C. §1962(b) contained in Count Five hereof.

231. Plaintiffs repeat and reallege the allegations of paragraphs 218 and 219 hereof.

WHEREFORE, plaintiffs demand damages against the defendants as follows:

(i) On each of the foregoing ten counts, the sum of $4,000,000, representing the loss in principal and accrued interest due on plaintiffs' Bonds, trebled to $12,000,000 pursuant to 18 U.S.C. §1964(c); and

(ii) the costs of this action and a reasonable attorney's fee pursuant to said section; and

(iii) appropriate interest and such other relief as this Court shall deem just and proper.

s/

STUART HECKER
Attorney for Plaintiffs
521 Fifth Avenue
New York, New York 10175
(212) 682-7070

EXHIBIT A: PHOTOCOPY OF NOTICE OF DISTRIBUTION, DATED DECEMBER 11, 1978

To the Holders of
NATIONAL RAILROAD
COMPANY OF MEXICO

Prior Lien 4 1/2% Gold Bonds
dated March 15, 1902

Notice is hereby given that on and after December 15, 1978, the undersigned, as Trustee under the Prior Lien Mortgage of National Railroad Company of Mexico dated March 15, 1902, will distribute an amount equal to 1% of the principal amount of said Bonds, on account of the interest accrued and unpaid on said Bonds as of December 15, 1978, from funds received on underlying collateral securities.

In respect of Bonds which have been stamped to indicate assent to the Offer of the United States of Mexico made pursuant to Mexico's Agreement with the International Committee of Bankers on Mexico dated February 20, 1946, the amount of such distribution will be paid to The Chase Manhattan Bank, Successor Fiscal Agent of Mexico, in accordance with the Assignments provided for in Article IX of said Agreement; and distribution will not be made to the holders of such assenting Bonds.

Holders of non-assenting Bonds may receive such distribution by presenting their Bonds for notation of such payment thereon at the Corporate Trust office of the undersigned, Four New York Plaza, New York, N.Y. 10015, accompanied by a letter of transmittal in form available upon request at such office and, in the case of foreign holders, accompanied by appropriate ownership certificates (U.S. Treasury Department Form 1001).

Unclaimed funds are also available from the following prior distributions:

1% payment	December 14, 1942
1% payment	September 17, 1945
4% payment	December 26, 1951
3-1/2% payment	April 28, 1954
2% payment	April 30, 1957
5% payment	April 15, 1965
5% payment	April 1, 1972
1-1/2% payment	May 15, 1975
3-1/2% payment	April 1, 1977

Bonds not stamped indicating receipt of these previous payments on account of interest should also be presented with appropriate transmittal letters, available upon request at the abovementioned office of Manufacturers Hanover Trust Company.

MANUFACTURERS HANOVER
TRUST COMPANY
as Trustee as aforesaid
By: T. C. Crane
Vice President

Dated: December 11, 1978
New York, N.Y.

EXHIBIT B: SECTIONS 4 & 5, ARTICLE FOUR, PRIOR LIEN BOND INDENTURE

SECTION 4. In case *(1)* default shall be made in the payment of any interest on any prior lien bond, or in the performance of any of the covenants of the Railroad Company contained in Section 5 of Article Two hereof, and any such default shall have continued for a period of six months; or in case *(2)* default shall be made in the due and punctual payment of the principal of any prior lien bond; or in case *(3)* default shall be made in the due observance and performance of any other covenant or condition herein required to be kept or performed by the Railroad Company, and any such last mentioned default shall have continued for a period of six months after written notice thereof to the Railroad Company from the Trustee, whose duty it shall be to give such notice at the request, in writing, of the holders of at least five (5) per cent. in amount of the prior lien bonds at the time outstanding, then, and in each and every such case of default, provided, however, in respect of each of the two cases so indicated, that such default shall have continued for six (6) months, as above provided, the Trustee, with or without entry, personally or by attorney, in its discretion *(a)* may sell to the highest and best bidder, all and singular the mortgaged property and premises, rights, franchises and interests, and appurtenances, and other real and personal property of every kind, and all right, title and interest, claim and demand therein, and right of redemption thereof, in one lot and as an entirety, unless a sale in parcels shall be required under the provisions of Section 6 of this Article, in which case such sale may be made in parcels as in said Section provided; such sale or sales shall be made at public auction at such place in the City of New York, in the State of New York, or at such other place, and at such time and upon such terms, as the Trustee may fix and briefly specify in the notice of sale to be given as

herein provided; or *(b)* immediately upon the expiration of six months in the two cases so indicated, and immediately upon default in payment of principal, in the other case, may proceed to protect and enforce its rights and the rights of bondholders under this indenture, by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for the foreclosure of this indenture, or for the enforcement of any other appropriate legal or equitable remedy, as the Trustee, being advised by counsel learned in the law, shall deem most effectual to protect and enforce any of its rights or duties hereunder.

Upon the written request of the holders of twenty-five (25) per cent. in amount of the prior lien bonds, in case of any such continuing default, it shall be the duty of the Trustee, upon being indemnified as hereinafter provided, to take all needful steps for the protection and enforcement of its rights and the rights of the holders of the prior lien bonds, and to exercise the powers of entry of sale herein conferred, or both, or to take appropriate judicial proceedings by action, suit or otherwise, as the Trustee, being advised by counsel learned in the law, shall deem most expedient in the interest of the holders of the prior lien bonds.

When a sale is to be made under the provisions of this Article, the Mexican Mortgage will define the procedure under the laws of the Republic of Mexico by which such sale may be made. It is not intended that the provisions of the Mexican Mortgage shall be exclusive hereof, but only supplementary hereto; provided, however, that if it shall be necessary in order to convey to the purchaser or purchasers of the mortgaged premises or any part thereof, a good and valid title thereto and to deliver possession thereof, that the sale should be made in the

Republic of Mexico and pursuant to the laws thereof, then such sale shall be made in accordance with the provisions of the Mexican Mortgage, but the provisions of the Mexican Mortgage shall not apply to the sale of any personal property subject to the lien hereof unless the Trustee shall elect to resort to the provisions thereof, and of the Mexican law for the sale thereof.

SECTION 5. Anything in this indenture contained to the contrary notwithstanding, the holders of seventy-five (75) per cent. in amount of the prior lien bonds outstanding from time to time, shall have the right to direct and to control the method and place of conducting any and all proceedings for any sale of the premises hereby conveyed, mortgaged or pledged, or for the foreclosure of this indenture or of the Mexican Mortgage, or for the appointment of a receiver, depositary or interventor or for any other proceedings hereunder.

EXHIBIT C: LETTER FROM WILLIAM B. DODGE, DATED OCTOBER 22, 1982

MANUFACTURERS HANOVER TRUST COMPANY
40 WALL STREET, NEW YORK, N.Y. 10015

October 22, 1982

Edward M. Sills, Esq.
225 Broadway
New York, New York 10007

Re: Texas-Mexican Railway Company

Dear Mr. Sills:

In your letter of October 7, 1982 you asked several questions with respect to the proposed sale of the Texas-Mexican Railway Company and related real property in Laredo, Texas (the "Collateral") by Manufacturers Hanover Trust Company, as Successor Trustee under the Prior Lien Mortgage, dated March 15, 1902, of National Railroad Company of Mexico to Union Trust Company of New York, as Trustee (the "Mortgage"). Following is Manufacturers Hanover's response to your questions:

1. Are you acting as Trustee or in any capacity at the present time for holders of any other mortgage or securities whose collateral or other security for payment may be affected by this foreclosure sale?

Manufacturers Hanover is acting as Successor Trustee under the following mortgages which are secured in whole or in part by the Collateral:

a. The Mortgage, providing for the issuance of up to $23,000,000 of Prior Lien Four and One-Half

Per Cent. Gold Bonds (the "Bonds").

b. Consolidated Mortgage of National Railroad Company of Mexico to Central Trust Company of New York, Trustee, dated March 15, 1902, providing for the issuance of up to $30,000,000 of First Consolidated Mortgage Four Per Cent. Gold Bonds.

c. Prior Lien Mortgage of Ferrocarriles Nacionales de Mexico to Central Trust Company of New York, Trustee, dated June 22, 1908, providing for the issuance of up to $225,000,000 of Prior Lien Four and One-Half Per Cent. Fifty-Year Sinking Fund Redeemable Gold Bonds.

In addition, Manufacturers Hanover is acting as Successor Trustee under the following:

d. Prior Lien Mortgage of the Mexican International Railroad Company to the Union Trust Company of New York, dated August 6, 1897, providing for the issuance of up to 1,200,000 Pounds Sterling of Four and One-Half Per Cent. Prior Lien Sterling Bonds.

e. First Consolidated Mortgage of Mexican International Railroad Company to the Union Trust Company of New York, dated August 6, 1897, providing for the issuance of up to $7,206,500 of Four Per Cent. Gold Bonds.

f. Trust Agreement of Ferrocarriles Nacionales de Mexico to Central Trust Company of New York, Trustee, dated June 2, 1913, providing for the issuance of up to 6,000,000 Pounds Sterling of Two Year Six Per Cent. Gold Notes.

The mortgage referred to in item f is in part secured by the pledge of Prior Lien Four and One-Half Per Cent. Fifty Year Sinking Fund Redeemable Gold Bonds issued under the mortgage referred to in item c, and is thus indirectly secured by the Collateral. The mortgages referred to in items d and e, above are not secured either directly or indirectly by the Collateral and accordingly, Manufacturers Hanover does not believe they will be affected by the proposed sale of the Collateral.

Further, Manufacturers Hanover is acting as Successor Trustee under the following Indentures, the securities listed under which Indentures are part of the Collateral:

g. Indenture of The Texas-Mexican Railway Company to the Guarantee Trust and Safe Deposit Company and Louis H. Meyer, dated July 1, 1881, providing for the issuance of up to $2,500,000 of 6% First Mortgage, 40 Year Gold Bonds.

h. Indenture of Corpus Christi, San Diego and Rio Grande Narrow Gauge Railroad Company to the Farmers Loan and Trust Company, dated June 24, 1880, providing for the issuance of up to $960,000 of 7% Gold Bonds.

2. (a) In connection with your minimum bid, on what basis would Prior Lien Four and One-Half Per Cent. Gold Bonds be acceptable to you in lieu of U.S. dollars? (b) Will you disqualify any such bonds owned or held by or for the issuing company, or any successor in interest thereto?

(a) Manufacturers Hanover, as Successor Trustee, will comply with Section 13 of Article Four of the Mortgage, which provides:

SECTION 13. In case of any sale as aforesaid, of

the mortgaged premises, any purchaser, for the purpose of making settlement or payment for the property purchased, shall be entitled to turn in any prior lien bonds and any matured and unpaid coupons, in order that there may be credited, as paid thereon, the sums payable out of the net proceeds, after allowing for the proportion of the total purchase price required to pay the costs and expenses of the sale, or otherwise; and such purchaser shall be credited, on account of the purchase price of the property purchased, with the sums payable out of such net proceeds on the bonds and coupons so turned in; and, at any such sale, any holders of the prior lien bonds may bid for, and purchase, such property, and may make payment on account thereof as aforesaid, and, upon compliance with the terms of sale, may hold, retain and dispose of such property without further accountability therefor.

(b) No. The Mortgage does not grant the Trustee the power to disqualify issued and outstanding Bonds.

3. Have you considered or taken any steps to assure the protection of any interests of subordinate bondholders whose status may be affected by a sale at this time?

Holders of the Bonds have exercised their right to instruct the Successor Trustee to sell the Collateral, as discussed under Question 4, below. Holders of any other securities secured by the Collateral will be entitled to receive the proceeds of sale of the Collateral to the extent such proceeds exceed the amount due the holders of the Bonds.

4. Are there any particular reasons for pursuing the remedy of foreclosure now, especially since it hasn't been

for so many years?

Section 5 of Article Four of the Mortgage provides:

> SECTION 5. Anything in this indenture contained to the contrary notwithstanding, the holders of seventy-five (75) per cent in amount of the prior lien bonds outstanding from time to time, shall have the right to direct and to control the method and place of conducting any and all proceedings for any sale of the premises hereby conveyed, mortgaged or pledged, or for the foreclosure of this indenture or of the Mexican Mortgage, or for the appointment of a receiver, depositary or interventor or for any other proceedings hereunder.

Manufacturers Hanover, as Successor Trustee, has been instructed by the holders of more than 75% of the outstanding Bonds to foreclose the Mortgage and to sell the Collateral at a public auction on November 2, 1982, in Laredo, Texas.

Very truly yours,

s/
William B. Dodge

WBD:re

EXHIBIT D: LETTER FROM AZIOS AND ASSOCIATES DATED MAY 12, 1982

J.M. Azios, President Rosie M. Azios, Vice President
AZIOS AND ASSOCIATES, INC. REALTORS

May 12th., 1982

Mr. Andres Ramos, President
Texas Mexican Railways Company
Convent and Washington
Laredo, Texas 78040

Dear Mr. Ramos:

In accordance with your request to estimate the market value of the non-operating properties of the Texas Mexican Railway Company as described on attached list, I respectfully offer the following:

After carefully considering and analyzing all factors that contribute to value, especially the effect of the present high interest rates and recent devaluation of the Mexican "Peso", plus the fact that most of this property is "limited purpose" property, it is the opinion of the appraiser that a fair market value for subject property as a "whole property" as of May 12th., 1982 was:

TWO MILLION, TWO HUNDRED FORTY-FIVE THOUSAND DOLLARS.....($2,245,000)

I hereby certify that I have no financial interest present or contemplated, in the property, and that neither the employment to make the appraisal nor the compensation is contingent on the value reported.

Respectfully yours,

s/
JOE AZIOS
Real Estate Appraiser

EXHIBIT E: AUDITED FINANCIAL STATEMENT
DATED JUNE 18, 1982

THE TEXAS MEXICAN RAILWAY COMPANY

Audited Financial Statement

December 31, 1981

Ernst & Whinney

[End cover page]

THE TEXAS MEXICAN RAILWAY COMPANY
Audited Financial Statements
December 31, 1981

Audited Financial Statements

ERNST & WHINNEY

1800 Victoria
Laredo, Texas 78040
512/722-6361

Board of Directors
The Texas Mexican Railway Company
Laredo, Texas

We have examined the balance sheet of The Texas Mexican Railway Company as of December 31, 1981, and the related statements of income and retained earnings and changes in financial position for the year then ended. Our examination was made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the financial statements referred to above present fairly the financial position of The Texas Mexican Railway Company as of December 31, 1981, and the results of its operations and the changes in its financial position for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

s/

Laredo, Texas
June 18, 1982

THE TEXAS MEXICAN RAILWAY COMPANY
BALANCE SHEET
December 31, 1981

ASSETS

	(In Thousands)
CURRENT ASSETS	
Cash and certificates of deposit ($8,260,000)	$ 8,802
Accounts receivable	6,300
Note receivable	66
Accrued interest receivable	206
Materials and supplies	2,337
Other	292
TOTAL CURRENT ASSETS	18,003
PROPERTIES — Note B	
Equipment	10,579
Land and improvements	12,323
Accumulated depreciation (deduction)	(5,783)
	17,119
	$ 35,122

LIABILITIES AND SHAREHOLDER'S EQUITY

	(In Thousands)
CURRENT LIABILITIES	
Accounts payable	$ 1,682
Accrued labor and fringe benefits	863
Bonds payable in default — Note B:	
Principal	2,340
Interest	6,486
Amount due Mexico	1,061
Income taxes and other	797
Current portion of note payable	40
TOTAL CURRENT LIABILITIES	13,269
PAYABLE — less portion classified current liability	160
DEFERRED CREDITS	282
DEFERRED INCOME TAXES — Note C	2,303
SHAREHOLDER'S EQUITY	
Common Stock, par value $100 per share - authorized and issued 25,000 shares	2,500
Retained earnings — Note B	16,608
TOTAL SHAREHOLDER'S EQUITY	19,108
CONTINGENCIES — Note E	
	$ 35,122

See notes to financial statements

THE TEXAS MEXICAN RAILWAY COMPANY
STATEMENT OF INCOME AND
RETAINED EARNINGS
Year Ended December 31, 1981

	(In Thousands)
Operating revenue	$25,600
Operating expenses:	
Ways and structures	2,439
Equipment — Note D	6,230
Transportation	7,649
General and administration	2,992
	19,310
INCOME FROM OPERATIONS	6,290
Other income:	
Interest	1,306
Other	532
	1,838
Interest expense	204
INCOME BEFORE INCOME TAXES	7,924
Income taxes — Note C	
Current	2,454
Deferred	1,083
	3,537
NET INCOME	4,387
Retained earnings at beginning of year	12,221
RETAINED EARNINGS AT END OF YEAR	$16,608

See notes to financial statements

STATEMENT OF CHANGES IN
FINANCIAL POSITION
Year Ended December 31, 1981

	(In Thousands)
SOURCE OF FUNDS	
Net income	$ 4,387
Expenses not requiring outlay of funds:	
Depreciation	644
Deferred income taxes	1,083
TOTAL FROM OPERATIONS	6,114
Decrease in note receivable	14
Decrease in other assets	20
Net book value of disposals of properties	691
Increase in accounts payable	35
Increase in amount due Mexico	15
Increase in deferred credit	282
	7,171
APPLICATION OF FUNDS	
Increase in accounts receivable	573
Increase in accrued interest receivable	96
Increase in materials and supplies	855
Additions to properties	2,323
Decrease in accrued labor and fringe benefits	50
Decrease in income taxes and other liabilities	1,518
Decrease in current portion of notes payable	754
Decrease in long-term portion of note payable	40
	6,209
INCREASE IN CASH AND CERTIFICATES OF DEPOSIT	962
Cash and certificates of deposit at beginning of year	7,840
CASH AND CERTIFICATES OF DEPOSIT AT END OF YEAR	$ 8,802

See notes to financial statements

THE TEXAS MEXICAN RAILWAY COMPANY
NOTES TO FINANCIAL STATEMENTS
December 31, 1981

NOTE A—SIGNIFICANT ACCOUNTING POLICIES

General: The financial statements include the accounts of The Texas Mexican Railway Company (TEX MEX), wholly owned by the Mexican government and approximately 80% of revenues result from shipments into or out of the Republic of Mexico. TEX MEX was originally incorporated in the State of Texas on March 13, 1875, and operates a 157 mile railway between Corpus Christi and Laredo, Texas.

Materials and Supplies Inventory: Inventories are stated at the lower of cost or market with cost being determined generally on the first-in, first-out basis.

Properties: Properties are stated principally at cost. Certain items of railroad property, principally track structures, are not depreciated but are accounted for under the alternative generally accepted accounting method of replacement accounting. Under this method, replacements are charged to expense and only additions or betterments are capitalized. Gains and losses on retirement of these items are included in operating expenses. Beginning in 1981, capitalized track structure (the frozen asset base) is being depreciated, for tax purposes only, over 5 years. Other properties are depreciated principally on the straight-line method for financial reporting purposes and on an accelerated basis for tax purposes. Upon sale or retirement of equipment and other depreciable property of the Railway Company, the cost of the asset less the sale proceeds is charged to accumulated depreciation.

Investment Tax Credits: Investment tax credits are accounted for by the flow-through method.

NOTE B—BONDS PAYABLE

TEX MEX is in default on the payment of principal and interest relating to the following bond issues:

	Principal	Interest
Corpus Christi, San Diego and Rio Grande Narrow Gauge Railroad Company 7% Bonds, issued June 24, 1880, maturity date July 1, 1910	$ 960,000	$3,495,000

[End of Page 6]

Texas Mexican Railway Company 6% Gold Bonds, issued July 1, 1881, maturity date July 1, 1921	$1,380,000	$2,991,000
	$2,340,000	$6,486,000

Interest accruing currently is being paid annually by TEX MEX and totaled $150,000 for the year ended December 31, 1981. The bonds are collateralized by all of the real estate properties of TEX MEX. No dividends may be paid from retained earnings until the default has been cured.

NOTE C—FEDERAL INCOME TAXES

The provision for income taxes was less than the amount computed by applying the United States income tax rate

of 46% to income before tax primarily due to the utilization of investment tax credit ($86,000).

Deferred tax expense of $1,083,000 resulted from depreciation timing differences between earnings for income tax and financial reporting purposes.

NOTE D—LEASES

Rent expenses for net daily rental charges on Railway operating equipment amounted to approximately $4,200,000 in 1981. All other operating leases are not material.

NOTE E—CONTINGENT LIABILITIES

Legal actions are pending against TEX MEX. Management and legal counsel believe that any ultimate liability will not materially affect the financial position of the Railway.

Additionally, in prior years TEX MEX claimed $2,000,000 of investment tax credits relating to certain operating leases. Of this amount, $1,344,000 is subject to recapture if the leases are terminated (recapture expiring $682,000 in 1983 and $662,000 in 1985).

EXHIBIT F: VALUATION DATED MAY, 1982
FIRST TWO SHEETS

THE TEXAS MEXICAN RAILWAY COMPANY

VALUATION

Confidential: Prepared solely for the use of the Government of Mexico and its Agencies

LEHMAN BROTHERS KUHN LOEB INCORPORATED

MAY, 1982

[End cover sheet]

This is a confidential memorandum prepared solely for the use of the Government of Mexico and its Agencies. This memorandum has been prepared by Lehman Brothers Kuhn Loeb Incorporated ("LBKL") primarily from information received from The Texas Mexican Railway Company, and no independent verification of this material has been made by LBKL. LBKL makes no representations or warranties, expressed or implied, as to the accuracy or completeness of this confidential memorandum or any of its contents, and not legal liability is assumed or to be implied with respect thereto.

[End first (unnumbered) page]

EXHIBIT G: NOTICE OF SALE OF COLLATERAL
DATED AUGUST 10, 1982

NOTICE OF SALE

Sale of the
Texas-Mexican Railway Company
and related Real Property in
Laredo, Texas

For the holders of
National Railroad Company of Mexico
Prior Lien Four and one-half Per Cent Gold Bonds
Dated March 15, 1902

Notice is hereby given that Manufacturers Hanover Trust Company, as Successor Trustee under the Prior Lien Mortgage, dated March 15, 1902, of National Railroad Company of Mexico to Union Trust Company of New York, as Trustee (the "Mortgage"), will foreclose the Mortgage and sell as an entirety all the Mortgage collateral consisting of the following securities and other property:

1. US $960,000 in aggregate principal amount of Corpus Christi, San Diego & Rio Grande Narrow-Gauge Railroad Company 7% Bonds due 1910.

2. US $1,380,000 in aggregate principal amount of Texas-Mexican Railway Company 6% Bonds due 1921.

3. All the authorized and outstanding shares of the $100 par value capital stock of Texas-Mexican Railway Company.

4. Real property in the Eastern Division of Laredo, Texas, included in the area bounded generally on the west by Sanders Avenue, on the north by Corpus Christi Street, on the east by Tilden Avenue, and on the southwest by the Rio Grande and including all or a portion of the following blocks: 011; 012; 013, 014; 015; 016; 017; 018; 019; 020; 1; 3; 4; 5; 6; 7; 8; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 29; 30; 32; 39; 40; 41; 42; 46; 47; 49; 50; 51; 52; 56; 57; 58; 60; 61; 62; 63; 64; 67; 68; 75; 76; 79; and 450-A, plus portions of Block Number 323 in the Western Division of Laredo, Texas.

5. That portion of the international railroad bridge between Nuevo Laredo, Tamaulipas, Mexico and Laredo, Texas, United States of America which is in the United States of America.

The sale will be at a public auction on Tuesday, November 2, 1982 at 10:30 a.m. in the ballroom of the La Posada Hotel, 1000 Zaragosa Street, Laredo, Texas. The sale will be made without covenant or warranty regarding title, possession or encumbrances for the purpose of paying the obligations secured by the Mortgage consisting of US $81,704,625 due and owing on the Prior Lien Four and one-half Per Cent Gold Bonds and the fees and expenses of the Trustee under the Mortgage. The Mortgage was recorded in Webb County, Texas on November 28, 1902 in Vol. V, pp. 418 to 516 of Deed of Trust Records.

The minimum bid acceptable to the Trustee is US $31,00,000 payable in cash or Prior Lien Four and one-half Per Cent Gold Bonds as provided in the Mortgage. The Trustee reserves the right: (i) to reject any and all bids; (ii) to adjourn the sale without notice; (iii) to

amend or supplement the terms of sale; and (iv) to reject the bid of any person to whom it determines the sale cannot be made legally, or if it determines the sale to such person would require the filing of a registration statement under the Securities Act of 1933. Further information concerning the property to be sold and the terms of sale is contained in materials for prospective bidders which may be obtained upon written request to the undersigned, accompanied by a cashier's check or money order in the amount of US $250 which shall not be refundable.

Manufacturers Hanover Trust Company
as Trustee under the Prior Lien Mortgage of National Railroad Company of Mexico
40 Wall Street
New York, N.Y. 10015
Tel. No.: 212-623-7843

Dated: August 10, 1982

EXHIBIT H: LETTER FROM KELLEY DRYE & WARREN BY EDWARD ROBERTS, III DATED OCTOBER 5, 1982

KELLEY DRYE & WARREN
101 Park Avenue
New York, N.Y. 10178

October 5, 1982

CERTIFIED MAIL

Hubert Park Beck
523 West 121st Street
New York, New York 10027

Re: Public Sale of the Texas-
Mexican Railway Company

Dear Mr. Beck:

On behalf of Manufacturers Hanover Trust Company, the successor trustee under the Prior Lien Mortgage of the National Railroad Company of New York, dated March 15, 1902, we hereby call your attention to the Notice of Foreclosure and Public Sale which is enclosed with this letter.

Sincerely,

s/
Edward Roberts, III

ER:re
Enclosure

EXHIBIT I: NOTICE OF DISTRIBUTION
DATED DECEMBER 20, 1982

To the Holders of
NATIONAL RAILROAD
COMPANY OF MEXICO
Prior Lien 4 1/2 % Gold Bonds
dated March 15, 1902

Notice is hereby given that on and after December 27 1982, the undersigned, as Trustee under the Prior Lien Mortgage of National Railroad Company of Mexico dated March 15, 1902, will distribute $1,355.00 per $1,000 bond, on account of the interest accrued and unpaid on said Bonds as of December 27, 1982, from funds received on underlying collateral.

In respect of Bonds which have been stamped to indicate assent to the offer of the United States of Mexico's Agreement with the International Committee of Bankers on Mexico dated February 20, 1946, the amount of such distribution will be paid to The Chase Manhattan Bank, Successor Fiscal Agent of Mexico, in accordance with the assignments provided for in Article IX of said Agreement; and distribution will not be made to the holders of such assenting Bonds.

Holders on non-assenting Bonds may receive such distribution by presenting their Bonds for notation of such payment thereon at the appropriate office of the undersigned, as set forth below, accompanied by a letter of transmittal in form available upon request at such office and, in the case of foreign holders, accompanied by appropriate ownership certificates (U.S. Treasury Department Form 1001).

If Sent By Mail

Manufacturers Hanover Trust Co.
Corp. Trust Securities Processing
P.O. Box 1916
G.P.O. Station
New York, N.Y. 10016

or

If Delivered By Hand
Manufacturers Hanover Trust Co.
130 John Street
Street Level
New York, New York

Unclaimed funds are also available from the following prior distributions:

1% payment	December 14, 1942
1% payment	September 17, 1945
4% payment	December 26, 1951
3-1/2% payment	April 28, 1954
2% payment	April 30, 1957
5% payment	April 15, 1965
5% payment	April 1, 1972
1-1/2% payment	May 15, 1975
3-1/2% payment	April 1, 1977
1% payment	December 15, 1978
2% payment	December 15, 1979
1% payment	December 15, 1980
23% payment	December 31, 1981

Bonds not stamped indicating receipt of these previous payments on account of interest should also be presented with appropriate transmittal letters, available upon request at the above-mentioned office of Manufacturers Hanover Trust Company.

MANUFACTURERS HANOVER
TRUST COMPANY
as Trustee

Dated: December 20, 1982
New York, N.Y.

EXHIBIT J: LETTER OF TRANSMITTAL FOR RECEIPT OF PAYMENT OR SALE OF COLLATERAL

LETTER OF TRANSMITTAL
NATIONAL RAILROAD COMPANY OF MEXICO
Prior Lien Four and One-half Per Cent Gold Bonds
Dated March 15, 1902

PAYMENT NO.	PAYMENT NO.
14	14

Date_____

Manufacturers Hanover Trust Company
Corporate Trust Department
40 Wall Street
New York, New York 10015
Attn: W. B. Dodge

GENTLEMEN:

Enclosed please find $ principal amount of Bonds of the above described issued numbered as follows, with Cash Warrant No. and subsequent Cash Warrants attached and Scrip Warrant No. and subsequent Scrip Warrants attached.

(Please arrange and list Bond numbers in numerical order—if more space is required use reverse hereof.)

The undersigned is presenting said Bond(s) for the purpose of receiving a payment in the amount of $1,355.00 per $1,000 Bond on account of the interest accrued and unpaid thereon as of 12/27/82 and for stamping said Bond(s) with the following notation of

such payment: "$1,355.00 per $1,000 p.a. ($677.50 per $500 p.a.) paid on account of interest accrued and unpaid hereon on to December 27, 1982."

The undersigned hereby certifies that the name and address of the owner of the Bond(s) enclosed herewith is as follows:

_____
NAME—PLEASE PRINT

_____
ADDRESS—PLEASE PRINT

Please issue your check for the amount of such distribution of interest payable to the order of, and return the Bond(s) enclosed herewith to

_____
NAME

_____
ADDRESS

By: ☐ Registered Mail
☐ Against counter receipt

_____
SIGNATURE OF OWNER OR AUTHORIZED AGENT

By _____
AUTHORIZED OFFICER

(Do Not Write in This Space)

Ticket	P. A.		Payment	Check No.
Checked	Rechecked	(Stops)	Delivered	Date

NOTICE

Bonds not stamped indicating receipt of previous payments on account of interest should be presented with appropriate transmittal letter or letters, available upon request at the office of Manufacturers Hanover Trust Company, in addition to this form.

EXHIBIT K: BANCO DE MEXICO, S.A., CERTIFICATION OF HOLDING OF PRIOR LIEN BONDS

BANCO DE MEXICO, S.A.

REF. WSR/82M-193

The Banco de México hereby certifies that on the date hereof it is holding U.S. $22,040,500 principal amount of the National Railroad Company of Mexico Prior Lien Four and one-half Per Cent Gold Bonds, dated March 15, 1092 (the "Bonds") on behalf of the United States of Mexico, the beneficial owner of the Bonds, bearing the serial number listed on Schedule I hereto.

BANCO DE MEXICO, S.A.

By s/_____
Name: Lic. Emilio Gutiérrez Moller
Title: Gerente General

By s/_____
Name: Ing. Héctor Reyes Retana
Title: Gerente General

EXHIBIT L: ASSIGNMENT, MEXICO TO TRANSPORTACION MARITIMA MEXICANA, S.A., DATED NOVEMBER 2, 1982

[Printed "letterhead"]

SECRETARIA
DE
NACIENDA Y CREDITO PUBLICO

[Typed "letterhead"]

DIRECCION GENERAL DE CREDITO PUBLICO
Dirección de Deuda Pública
305-I-4658

FOR VALUE RECEIVED, the United States of Mexico hereby sells, assigns and transfers to Transportación Maritima Mexicana, S.A. all right, title and interest in the National Railroad Company of Mexico Prior Lien Four and one-half Per Cent Gold Bonds, dated March 15, 1902, bearing the serial numbers listed on Schedule I hereto and certified by the Banco de Mexico on the date hereof as held by the Banco de Mexico on behalf of the United States of Mexico, in the principal amount of U.S. Twenty-Two million, forty thousand, five hundred dollars (U.S. $22,040,500.00), together with all interest coupons attached thereto.

DATED: November 2, 1982

UNITED STATES OF MEXICO
By s/_____
Name: C.P. Roberto Diéguez Armas
Title: Director de Deuda Pública

In the presence of
s/_____

EXHIBIT M: ASSIGNMENT, TRANSPORTACION MARITIMA MEXICANA, S.A. TO MEXRAIL, INC., DATED NOVEMBER 2, 1982

TRANSPORTACION MARITIMA MEXICANA, S.A.
Ave. Cuauhtómoo No. 1230 México 13, D.F.

Telefono
559-96-22

Dirección Cablegrafica:
Mexmarim
Telex 017-73949

FOR VALUE RECEIVED, Transportacion Maritima Mexicana, S.A., hereby sells, assigns and transfers to Mexrail, Inc. all right title and interest in the National Railroad Company of Mexico Prior Lien Four and One-Half Per Cent Gold Bonds bearing the serial numbers listed on Schedule I hereto in the principal amount of U.S. Twenty Two Million, Fourty Thousand and Five Hundred dollars (U.S. $22,040,500.00), together with all interest & coupons attached thereto.

Dated: November 2, 1982

By: s/_____
Name: Alejandro Rojas M.V.
Title: Managing Director

By: s/_____
Name: Eduardo De Campo C.
Title: Attorney-in-fact

In the presence of
s/_____